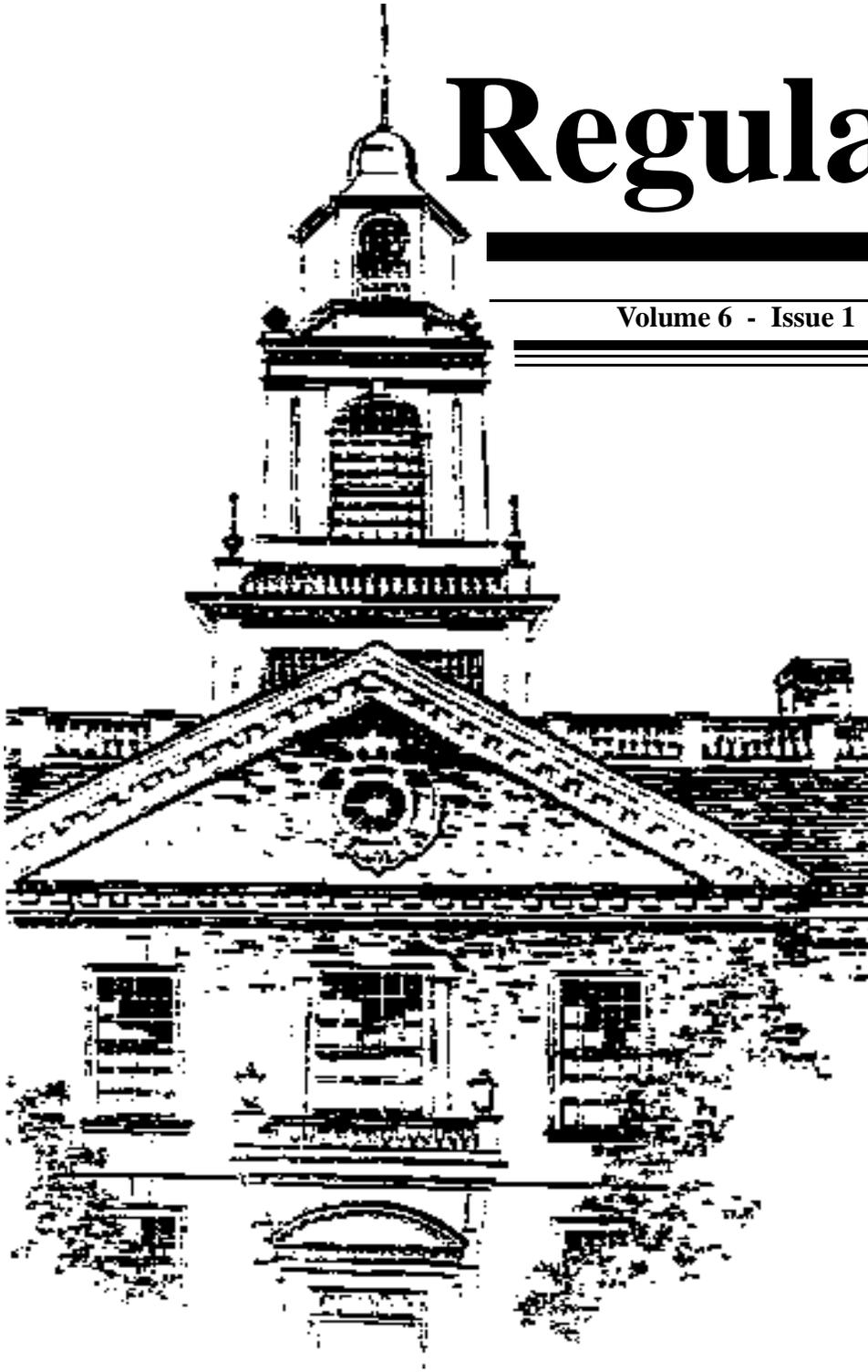

Delaware Register of Regulations



Issue Date: July 1, 2002

Volume 6 - Issue 1

Pages 1 - 117

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Final

General Notices

Calendar of Events &

Hearing Notices



Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before June 15, 2002.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

5 DE Reg. 1337 - 1339 (01/1/02)

Refers to Volume 5, pages 1337 - 1339 of the Delaware Register issued on January 1, 2002.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section,

no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
JULY 1	JUNE 15	4:30 P.M.
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.

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DEPARTMENT OF EDUCATION

14 DE Admin. Code 1050 - 1052

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))

*** PLEASE NOTE: THE JUNE 2002 ISSUE OF THE REGISTER CONTAINED A NOTATION THAT THE TABLE OF "Maximum Game Schedules and Designated Sport Season" CONTAINED NO CHANGES AND WAS NOT BEING REPRODUCED. THERE WAS A CHANGE IN THE NUMBER OF SPRING BOYS BASEBALL AND GIRLS SOFTBALL CONTESTS PERMITTED FROM 18 TO 20. THAT SECTION IS BEING REPRODUCED HERE.**

**1051 DSSAA SENIOR HIGH SCHOOL
INTERSCHOLASTIC ATHLETICS**

24.0 Maximum Game Schedules and Designated Sport Season

24.1 The maximum number of regularly scheduled interscholastic contests/competition dates for each team and individual in the recognized sports and their designated season shall be as follows: **(The Table is on the following page)**

24.2 Participation in any part of a quarter/half shall count as a quarter/half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.

24.3 A week shall be designated as starting on Monday and ending on Sunday for all sports except football. A football week shall begin the day of the varsity game and end the day preceding the next varsity game or the following Friday.

24.4 The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than four (4) contests/competition dates in a week.

24.5 The maximum number of regularly scheduled contests for each of the recognized sports, except football, shall be exclusive of conference championships, playoffs to

determine tournament state berths, and the state tournament/meet. The maximum number of regularly scheduled football contests shall be exclusive of the state tournament.

24.5.1 Any playoffs to determine state tournament berths shall be under the control and supervision of the DSSAA tournament committee.

24.6 A student shall participate in a particular sport for only one season during each academic year.

24.7 A school which participates in more than the allowable number of contests in a season shall be suspended from the state playoffs or, if a non-qualifying team, fined \$200.00.

24.8 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and be assessed a \$100.00 fine.

24.9 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the penalties stipulated in 14.0.

See 4 DE Reg. 1951 (6/1/01)

ERRATA

Sport <i>Season</i>	Team Limitations <i>Week</i>	Individual Limitations	
		<i>Week</i>	<i>Day</i>
Fall			
Cross Country (boys and girls)	16 competition dates	•+3 competition dates	
Field Hockey (girls)	16 contests	•3 contests	2 halves
Football (boys)	10 contests	1 contest	4 varsity quarters or any combination of 5 varsity and subvarsity quarters provided no more than 3 quarters are at the varsity level
Soccer (boys)	16 contests	•3 contests	2 halves
Volleyball (girls)	16 competition dates of which 1 date may involve more than 2 teams	•3 competition dates	•3 competition dates
Winter			
Basketball (boys and girls)	22 contests	•3 contests	•3 competition dates 4 quarters
Swimming (boys and girls)	16 Competition Dates•	3 competition dates	•3 competition dates
Indoor Track (boys and girls)	12 contests	•+ 3 contests	•+3 contests
Wrestling (boys)	*18 contests	•3 competition dates	•3 competition dates 5 matches
Spring			
Baseball (boys)	18 20 contests	•3 contests	•3 contests
Softball (girls)	18 20 contests	•3 contests	•3 contests
Golf (boys)	16 competition dates	•3 competition dates	•3 competition dates
Tennis (boys and girls)	16 contests	•3 contests	•3 contests
Outdoor Track (boys and girls)	18 competition dates	•+3 competition dates	•+3 competition dates
Lacrosse (boys and girls)	16 contests	•3 contests	•3 competition dates 4 quarters (boys) or 2 halves (girls)
Soccer (girls)	16 contests	•3 contests	2 halves

• The third contest/competition date in a week must be held on Friday (no early dismissal permitted), Saturday or Sunday. This requirement is waived when a school is closed for the entire week such as during winter or spring vacation.

+ A team may not participate in two different cross country, indoor track or outdoor track meets on the same day.

* Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
REAL ESTATE COMMISSION**

24 DE Admin. Code 2925

Statutory Authority: 24 Delaware Code,
Section 2905(a)(1) & 2911(b),
(24 **Del.C.** §2905(a)(1), §2911(b))

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 2905(a)(1) and 2911(b), the Delaware Real Estate Commission proposes to revise its Guidelines for Fulfilling the Delaware Real Estate Education Requirements. The proposed amendments revise Guideline 8.2 by deleting the guideline in its entirety and presenting a new guideline that reorganizes the original content with some further clarifications. Substantive changes include defining what constitutes “faithful and complete attendance” and clarifying that sponsors or providers of all continuing education shall be responsible for conduct of their courses.

A public hearing will be held on the proposed Education Guidelines on Thursday, August 8, 2002 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Commission will receive and consider input in writing from any person on the proposed Education Guidelines. Any written comments should be submitted to the Commission in care of Joan O’Neill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Education Guidelines or to make comments at the

public hearing should notify Joan O’Neill at the above address by calling (302) 744-4519.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

- 1.0 Introduction
- 2.0 Objective
- 3.0 Administration
- 4.0 Education Committee
- 5.0 Course Approval
- 6.0 Program Criteria
- 7.0 Course Approval Process
- 8.0 Provider Responsibilities
- 9.0 Instructor Qualifications
- 10.0 Instructor Approval Process

**Guidelines for Fulfilling the Delaware Real Estate
Education Requirements**

1.0 Introduction -- Mandate for Continuing Education

1.1 24 **Del.C.** §2911(b) sets forth a requirement that “...each Delaware Real Estate Certificate holder applying for renewal shall be required to successfully complete in the two year period prior to renewal, continuing education hours in an amount to be prescribed by the Rules and Regulations of the Commission. Each Delaware Real Estate Certificate holder at the time of certificate renewal shall be required to furnish to the Commission satisfactory evidence that they have successfully completed the required number of hours in approved courses.....”

1.2 The continuing education requirements apply to all licensees whether or not the certificate holder has been

officially active or inactive during the two year period prior to expiration. The Delaware Real Estate Commission shall be informed of the completion of the continuing education requirement at the time of submission of the Real Estate Certificate Renewal Application. In the case of an inactive licensee proof of completion of the continuing education requirement will be due upon reactivation of the license. The number of continuing education credit hours required is established within the Rules and Regulations of the Commission. The number and content of mandated courses may vary at the discretion of the Commission. The current requirement for continuing education is included within these guidelines. Updates may be obtained from the offices of the Real Estate Commission or the Real Estate Education Committee.

2.0 Objective

Through education, the licensee shall be reasonably current in real estate knowledge and shall have improved ability to provide greater protection and service to the real estate consumer, thereby meeting the Delaware Real Estate Commission's primary objective of protection of the public.

3.0 Administration

The Delaware Real Estate Commission has the governing powers to approve or disapprove educational course offerings and instructor certification and reserves the right to suspend or revoke the privilege of conducting any educational course to any course provider(s) or instructor(s) who fail to adhere to the educational guidelines as established by the Commission.

4.0 Education Committee

4.1 The Commission may utilize the services of a committee, appointed by the Commission, to assist in the educational objectives of the Commission.

4.2 Committee Structure - The Committee shall be comprised of twelve (12) members, four (4) from each county. Three (3) members shall be public members and the remaining members shall hold a valid Delaware real estate license.

4.3 Committee Officers - (Chairperson and Vice-Chairperson) shall be elected from the Committee and shall serve one year terms. Election of said officers will be held in January.

4.4 Term of Office

4.4.1 Each appointment shall be for four (4) full years. No person who has been appointed to the Committee shall again be appointed to the Committee until an interim period of at least one (1) year has passed since such person last served.

4.4.2 Five (5) members shall constitute a quorum; and no recommendation shall be effective without the

affirmative vote of a majority of the quorum. Any member who fails to attend at least half of all regular business meetings without valid excuse, or who fails to attend at least half of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed by the Commission.

4.4.3 Committee members shall be appointed by the Commission. Applications for committee membership will be received by the Commission, via a letter of intent and a current resume 60 days prior to an anticipated vacancy. Committee members may be removed by the Commission for good cause. If an interim vacancy should occur, the Commission shall appoint a person to fill the position for a full four (4) year term commencing with the date of appointment.

4.5 Committee Responsibilities

4.5.1 It shall be the duty of the Education Committee to monitor the content and conduct of all pre-licensing courses for salesperson and broker as well as continuing education programs offered to fulfill the educational requirements for obtaining and maintaining licensure in the State of Delaware.

4.5.2 The Education Committee shall have the responsibility for reviewing all applications for pre-licensing and continuing education credit as well as certification of instructor applicants, to insure that all applications satisfy the requirements.

4.5.3 After this review, the Education Committee shall recommend that an application be approved or disapproved by the Commission. If approval is recommended with regard to continuing education, the Committee shall indicate the number of full credit hours for the course. In making its decisions, the Education Committee shall follow the provisions contained in these guidelines. Any recommendation for non-approval shall be accompanied by a specific reason. Only the Delaware Real Estate Commission shall have the power to approve or disapprove the application for a course offering or instructor certification.

4.5.4 The Education Committee shall undertake such other duties and responsibilities as the Commission shall direct from time to time.

4.5.5 Committee meeting times and places shall be as necessary, but in all cases within two weeks prior to the next regularly scheduled meeting of the Commission. Committee meetings shall be conducted in accordance with the Administrative Procedures Act.

4.5.6 Notwithstanding any rule, regulation, or guideline to the contrary, members of the Education Committee who attend at least eighty percent (80%) of the meetings of the Education Committee during a biennial licensure period may receive up to six (6) continuing education credit hours applicable to elective credit hours only. This guideline will

become effective beginning May 1, 2002.

5.0 Course Approval

5.1 General Requirements - An educational activity to be approved as satisfying Delaware's real estate continuing education requirements must be an organized real estate related activity, offered under responsible sponsorship, facilitated by an instructor certified by the Commission.

5.2 Organization - The sponsoring organization must have a designated individual responsible for the administration and coordination of the education program. That designee shall be responsible to report to the Commission and/or the Committee for the proper conduct of each such program.

5.3 Facilities - The sponsoring organization must provide or arrange for appropriate educational facilities, and when necessary, library and reference materials and all instructional aids and equipment consistent with the content, format, and objective of each learning experience.

5.4 Performance - Attendance shall be used as the minimum requirement for satisfactory completion, in addition, alternative criteria for evaluating student performance may be established by the sponsoring organization or class instructor.

5.5 Maintenance and Availability of Records - An individual record of participation must be maintained by the sponsoring organization for a period of not less than three (3) years from the date of the activity and upon request made readily available as an official statement to each student of his or her participation. Information which must be included as part of this record is:

5.5.1 Name and address of the organization offering the course.

5.5.2 Name of course topic.

5.5.3 Title of the course

5.5.4 Name, resume and certificate number of the individual instructors.

5.5.5 Completion date of the course offering.

5.5.6 Number of hours of approved credit.

5.5.7 A detailed outline of the course.

5.5.8 A copy of the approval letter received from the Commission

5.5.9 A copy of the individual instructor(s) certification(s) letter(s) issued by the Commission.

5.5.10 A copy of the individual student evaluations on forms provided by the Commission.

5.5.11 A list of the individual students attending the course offering and their completion status, e.g., satisfactory or unsatisfactory.

5.6 Program Evaluation - Evaluation forms, approved by the Real Estate Commission shall be used to measure the effectiveness of the program design, operation and effectiveness of the instructor(s). These forms must be returned to the Education Committee for review within

fifteen (15) calendar days of completion of the program.

6.0 Program Criteria

6.1 Areas of Concentration for Acceptable Courses

6.1.1 Courses of instruction and seminars, to be considered eligible for continuing education credit approval must be in a definable real estate topic area. Courses that may be considered eligible must be in the following topic areas:

6.1.1.1 Federal, State or Local Legislative Issues (Legislative Update).

6.1.1.2 Fair Housing Law

6.1.1.3 Anti-Trust Law

6.1.1.4 Real Estate Ethics or Professional Standards

6.1.1.5 Agency Relationships and Responsibilities

6.1.1.6 Professional Enhancement for Practicing Licensees

6.1.2 Courses of instruction which Are Not acceptable for credit include, but are not limited to:

6.1.2.1 Offerings in mechanical office and business skills such as typing, business machines and computer operations.

6.1.2.2 Personal development and/or enrichment and motivational courses, speed reading memory improvement, and language report writing.

6.1.2.3 Correspondence courses and program learning courses not under the direct supervision of a certified instructor, except those courses that have been certified through The Association of Real Estate License Officials (ARELLO) Distance Education Certification Program.

6.1.2.4 General training or education required of licensees to function in a representative capacity for an employing broker except if said training or education complies with the above stated topic areas, has been approved by the Commission and is taught by a certified instructor.

6.1.2.5 Meetings which are a normal part of in-house staff or licensee training, sales promotions or other meetings held in connection with the general business of the licensee and/or broker; any meetings that a licensee is required to attend as a condition of continued employment, whether imposed by rules of the employing broker or by a contractual agreement between broker and franchiser, does not qualify for continuing education credit. Work experience does not qualify for continuing education credit.

6.1.2.6 Non-educational activities of associations, trade organizations, and professional and occupational group membership or certification are not considered creditable continuing education activities. Examples of such activities are, but not limited to:

6.1.2.6.1 membership or service in a

professional, occupational or other society or organization;

6.1.2.6.2 attendance at annual, periodic or special meetings, conventions, conferences, rallies and retreats;

6.1.2.6.3 writing or presentation of articles or research papers;

6.1.2.6.4 a program or other type of organizational assignment;

6.1.2.6.5 self-directed reading or study. As a guiding principle "self-directed studies" and "individual scholarship" are not considered creditable educational activities.

See 5 DE Reg. 1171 (11/1/01)

7.0 Course Approval Process

7.1 An application for course approval (on forms approved by the Commission), course outline, all applicable fees and any other documentation that may be required, must be filed by the course sponsor or provider, with the Division of Professional Regulation, Delaware Real Estate Commission, Education Committee, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware 19904-2467, at least sixty (60) days prior to the date that the course is to be held. Failure to file within the appropriate time limit may be cause for rejection. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the completed application. An application that is incomplete when filed shall not be considered to have been filed.

7.2 A course may be certified for a period of two (2) calendar years, provided the course is conducted by the sponsor or provider making application, the curriculum and course length remains exactly as approved, and certified instructors are utilized. The Education Committee may recommend a shorter or probationary approval where good cause for limited approval can be demonstrated. A sponsor who receives approval to conduct a certified course or activity, must notify the Commission in writing, of the intent to hold such activity, at least seven (7) days in advance of the start of the activity. Included in the letter of intent shall be the course approval number, date(s) and time(s) and location of the course, topic area, course name, instructor name(s) and instructor certification number(s). Courses can not be automatically renewed. Sponsors providers will need to reapply by the course expiration date and before conducting further courses. The Education Committee shall have the right to recommend to the Commission that a provider's privilege of conducting a certified course be revoked for the remainder of the approval period, if the Education Committee determines that the provider is not maintaining the standards required in these guidelines

8.0 Provider Responsibilities

8.1 The organization receiving approval of a course or program accepts the responsibility to maintain a permanent record of the course activity for not less than three years from the date of the course offering. The permanent record shall include the documents as listed in "Maintenance and Availability of Records".

8.2 ~~The sponsor or provider of all continuing education courses shall arrange for an on-site monitor in addition to the certified instructor for each activity. The monitor shall be responsible, at a minimum, for ensuring faithful and complete attendance by students, as well as facilities management. The monitor may be a student for educational credit for that course or activity. This guideline shall not apply to courses that have been certified through ARELLO's Distance Education Certification Program. Sponsors or providers of all continuing education courses shall be wholly and completely responsible for the conduct of their courses, including faithful and complete student attendance as well as facilities management. Faithful and complete attendance is attentive presence for at least fifty (50) minutes of each credit hour.~~

8.2.1 Sponsors and providers shall arrange for an on-site monitor in addition to the certified instructor for each course or activity.

8.2.2 Monitors are appointed to assist the course sponsors or providers and instructors. As a minimum, monitors will ensure students provide their own signatures on the course roster and advise the provider of those students who do not comply with faithful and complete attendance.

8.2.3 Monitors may be a student for educational credit for that course or activity.

8.3 The course sponsor or provider, will supply to the student at the completion of the course or program, a certificate of completion. This certificate must contain, but is not limited to, the following information:

- Student Name
- Sponsors Name
- Topic Area Name
- Course Title
- Date course was completed
- Number of Credit Hours
- Course Approval Number
- Instructor Name(s)
- Instructor Certificate Number(s)

8.4 The organization offering the course, shall, within fifteen (15) days after the completion of the activity, provide a list of participants, their real estate license numbers (if applicable) and a copy of each student's course and instructor evaluation form and an evaluation summary report form to the Commission's Office. The evaluation summary report form shall be signed by any instructors who participated in the delivery of the course thus indicating each has had the opportunity to review the evaluation result. Failure of the

organization to provide this information may be grounds to suspend the approval of that course or educational activity, in the absence of a showing of good cause for that failure.

8.5 Where the provider is a prelicensing school, the administrator thereof is responsible to apply to the Delaware Department of Public Instruction for certification and to maintain such certification. Proof of current certification must be attached to the application for course approval submitted to the Education Committee.

8.6 Prelicensing schools are to solicit the names of students interested in being contacted by recruiters by the second class meeting. Any students joining after the first class must be informed of the opportunity to be a part of the recruiting roster at the first class attended. Schools must supply the recruiting roster within seven (7) days of receiving a request from a broker.

8.7 Prelicensing schools will also furnish each student with current information regarding the prelicensing examination to include the "Real Estate Candidate Handbook" which is available to prelicensing schools through the testing service for this purpose.

8.8 Members of the Real Estate Commission or Education Committee And/or Their Official Representatives Shall Have the Right to Monitor Any Approved Course Without Notice.

See 5 DE Reg. 1071 (11/1/01)

9.0 Instructor Qualifications

9.1 It is the stated policy of the Delaware Real Estate Commission that qualified instructors must be directly involved in presenting any professional educational activity. Qualifications are determined by all or a combination of:

9.1.1 competence in the subject matter (may be evidenced by experience in which command of subject matter is recognized by the individual's peers, and/or by a formal education or training, and/or by demonstrated knowledge through publication in professional journals or appropriate media);

9.1.2 ability to transmit the educational content to the participants as determined by student evaluations and/or test results from previous instructional assignments;

9.1.3 understanding of the program objectives; and

9.1.4 knowledge and skill in the instructional methodology and learning processes to be employed.

9.2 The persons applying for instructor certification in teaching a real estate related topic must have five (5) years of full time experience in the trade, business, or profession that relates to the topic of instruction to be taught, and meet at least one (1) of the following sets of qualifications:

9.2.1 An approved instructor must meet two of the following criteria:

9.2.1.1 a Bachelor's degree

9.2.1.2 a Broker's Certificate

9.2.1.3 a professional designation such as, but

not limited to; ALC (Accredited Land Consultant), CRS (Certified Residential Specialist), CCIM (Certified Commercial Investment Member) CPM (Certified Property Manager), CRB (Certified Residential Broker), CRE (Counselor Real Estate), MAI (Member Appraisal Institute), SIOR (Society Industrial Office Realtors) SRA (Senior Residential Appraiser), SRPA (Senior Real Property Appraiser), but not including GRI (Graduate Realtor Institute);

9.2.2 Possession of a valid teaching credential or certificate issued in the State of Delaware (or any State with qualifications that are equal to, or that exceed the qualification standards of the State of Delaware), and/or five (5) years of teaching experience in an accredited public, private, or parochial school; and/or five (5) years teaching experience in an accredited junior college, college or university.

9.2.3 A fully designated senior member of the Real Estate Educators Association who has been issued the DREI (Designated Real Estate Instructor) designation.

9.3 The Commission may waive the above requirements contingent upon review of proof of collateral experience in related fields of real estate. The Commission reserves the right to exercise its discretion in denying an applicant who has had a disciplinary action taken against him/her.

9.4 In addition to the qualifications listed above, the Commission shall take into consideration evaluations from previous programs that the applicant has instructed. The Commission will also take into consideration recommendations or absence thereof of course providers, course coordinators, administrators and institutions that have employed the applicant.

9.5 The Education Committee may, at its discretion, subject to Commission approval, require a potential instructor to take a teaching methodology course (such as those given by colleges and universities) and/or a teaching methods seminar (such as currently given by the National Association of Realtors or Real Estate Educator's Association).

10.0 Instructor Approval Process

10.1 Applicants for instructor shall submit an application (on forms approved by the Commission), resume and any applicable fees to the Division of Professional Regulation, Delaware Real Estate Commission, Education Committee, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467, **at least sixty (60) days prior to the employment starting date.** Failure to file within the appropriate time limit may be cause for rejection. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the application. An application that is incomplete when filed shall not be

considered to have been filed.

10.2 Upon approval, an instructor may be certified for a period of two (2) calendar years. An instructor may be certified in more than one subject or topic area, (e.g. pre-licensing math, pre-licensing law, fair housing, ethics, etc.). An instructor may only teach courses as preapproved by the Commission. Instructor certification can not be automatically renewed. Instructors will need to reapply by the certification expiration date and before teaching any further courses or programs. Applications are available from the Commission office.

10.4 An Instructor may receive credit for continuing education hours towards the real estate license renewal requirement in the same amount of hours as approved for credit for the course/topic being taught. This is a one time credit per licensure period, regardless of the number of times that said course/topic is taught during said course or instructor certification period.

10.5 The Education Committee shall have the right to recommend to the Commission that a certified instructor lose the privilege of certification for the remainder of the certification period if the Education Committee determines that the instructor is not maintaining the standards and/or policies required in these guidelines.

10.6 It is the Stated Policy of the Delaware Real Estate Commission That at No Time During Periods of Instruction Shall Any Person Involved in Any Approved Real Estate Educational Activity, Use, or Attempt to Use, the Position of Instructor, Sponsor or Provider Etc., to Solicit Employees or Sales Representatives.

DEPARTMENT OF EDUCATION

14 DE Admin. Code

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C. SECTION 122(d) 275 CHARTER SCHOOLS

A. Type Of Regulatory Action Required

New Regulation

B. Synopsis Of Subject Matter Of The Regulation

The Secretary of Education seeks the approval of the State Board of Education to adopt a new regulation for Charter Schools. The purpose of this regulation is to provide rules to govern the implementation of Chapter 5 of Title 14 of the *Delaware Code*, Charter Schools. This regulation establishes the requirements for applying for a charter to operate a public school, and for opening and operating the

school, when a charter is granted by the Department of Education with the approval of the State Board of Education. This regulation affects students who attend Charter Schools, the parents and other caregivers of these students, the directors, staff and administrators of the charter schools, and the students, staff, administrators and boards of the reorganized school districts of the State. This regulation binds all Charter Schools and is incorporated into all charters approved by the Department with the consent of the State Board.

C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation will help Charter Schools improve student achievement as measured against state achievement standards.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation will help insure that all Charter School students receive an equitable education.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation will help to ensure that all Charter School students' health and safety are adequately protected.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation will help to insure that all Charter School students' legal rights are respected.

5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation will preserve the necessary authority and flexibility of decision making in the Charter Schools.

6. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation will preserve the necessary authority and flexibility of decision making in the Charter Schools.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated be will remain in the same entity.

8. Will the new regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The new regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social

studies.

9. Is there a less burdensome method for addressing the purpose of the new regulation? A regulation was needed in order to address problems that were not addressed in the Charter School law.

10. What is the cost to the state and to the local school boards of compliance with the new regulation? There is no cost to the state and to Charter Schools for compliance with the new regulation.

275 Charter Schools

1.0 Purpose and Effect

1.1 The purpose of these regulations is to provide rules to govern the implementation of Chapter 5 of Title 14 of the Delaware Code (hereafter, the "Charter School Law").

1.2 These regulations establish the requirements for applying for a charter to operate a public school, and for opening and operating the school, when a charter is granted by the Department of Education with the approval of the State Board of Education.

1.3 These regulations affect students who attend Charter Schools, the parents and other caregivers of these students, the directors, staff and administrators of the Charter Schools, and the students, staff, administrators and boards of the reorganized school districts of the State.

1.4 These regulations shall bind all Charter Schools and are incorporated into all charters approved by the Department with the consent of the State Board.

2.0 Definitions. The following definitions apply for purposes of interpreting the Charter School Law and these regulations:

Accountability Committee: Any Charter School Accountability Committee established by the Department to review and report to the Department as provided in Sections 511 and 515 of the Charter School Law.

Applicant: A legal entity organized under the Delaware General Corporation Law that has applied to the Department for a charter to operate a charter school.

Audit: an informal financial, programmatic, or compliance audit of a charter school.

Charter Holder: The legal entity organized under the Delaware General Corporation Law to which a charter is issued by the Department with the approval of the State Board.

Charter School: A non-home based full time public school that is operated in an approved physical plant under a charter granted by the Department with the approval of the State Board for the personal physical attendance of all students.

DSTP: The Delaware Student Testing Program established at 14 Del. C. §151, et.seq., and, as the context requires, the assessments administered pursuant to the

program.

Department: The Delaware Department of Education
First Instructional Day: The first day a Charter School is open with students in attendance.

Formal Review: The lawful investigation of a Charter School to determine whether the school is violating the terms of its charter. Formal reviews may include, but are not limited to, on site visits, inspection of educational records and other documents, and interviews of parents, Charter School employees and others with knowledge of the school's operations and educational programs.

Founding Board of Directors: The duly elected Board of Directors of an Applicant at the time the original application for a charter is filed with the Department.

Parent: The natural or adoptive parent, or the legal guardian, of a student enrolled in the charter school. "Parent" also includes individuals authorized to act as "relative caregivers" under the provisions of 14 Del.C. §202(e)(2)).

Performance Review: Reserved

Renewal: The approval of an application to continue operating an existing Charter School for an additional five year period, available after the school has been in operation for three years.

Secretary: The Secretary of the Delaware Department of Education.

State Board: The Delaware State Board of Education.

3.0 Application Process

3.1 Application Deadlines: Applications to establish new Charter Schools must be submitted to the Department between November 1st and December 31st for schools preparing to admit students the second September 1st thereafter.

3.2 All applications, whether for an original charter, a modification of a charter or the Renewal of a charter, shall be made on forms approved by the Department.

3.3 The Department may require a criminal background check on any person involved in the preparation of an application, whether for an original charter, a major modification or a charter Renewal, and on any person involved in the development of the proposed Charter School.

3.4 An original and ten (10) copies of a completed application must be received by the Department by the application deadline in order for the application to be considered. Incomplete applications, or applications received after the deadline, will not be considered.

3.5 All written communications from the Department or the Accountability Committee to an Applicant shall be sent to the contact person identified in the application, at the address provided in the application. An Applicant is responsible for notifying the Department in writing of any change in the contact person or contact address after its application is submitted.

3.6 An application is not complete unless all of the following requirements are met:

3.6.1 All questions on the application form are completely answered.

3.6.2 All documentation required by the application form or subsequently requested by the Department or the Accountability Committee is received.

3.7 No application for a new Charter School will be accepted by the Department in any year in which the Department with the approval of the State Board has decided not to accept applications.

3.8 Applications will not remain pending from year to year. Applications that do not result in the issuance of a charter must be resubmitted in full in subsequent years to be considered in subsequent years.

3.9 The State Board of Education may designate one or more of its members to sit as non-voting members of the Accountability Committee.

3.10 In deciding whether to approve or disapprove any application for an original charter, a major modification of a charter or the Renewal of a charter, the Secretary and State Board shall base the decision on the record, which shall consist of the application and any documents filed therewith in support of the application, the preliminary and final report of the Accountability Committee, any response or other evidence, oral or otherwise, provided by the Applicant to the Accountability Committee prior to the issuance of its final report, and any comments received at any public hearing conducted pursuant to the provisions of the Charter School Law, including comments made at any such hearing by the applicant in response to the Accountability Committee's final report. No other evidence shall be considered.

4.0 Standards and Criteria for Granting Charter

4.1 Applicant Qualifications

4.1.1 The Applicant must demonstrate that its board of directors has and will maintain collective experience, or contractual access to such experience, in the following areas:

4.1.1.1 Research-based curriculum and instructional strategies, to particularly include the curriculum and instructional strategies of the proposed educational program.

4.1.1.2 Business management, including but not limited to accounting and finance.

4.1.1.3 Personnel management.

4.1.1.4 Diversity issues, including but not limited to outreach, student recruitment, and instruction.

4.1.1.5 At-risk populations and children with disabilities, including but not limited to students eligible for special education and related services.

4.1.1.6 School operations, including but not limited to facilities management.

4.1.2 The application must identify the certified

teachers, the parents and the community members who have been involved in the preparation of the application and the development of the proposed Charter School.

4.1.3 The Applicant's bylaws must be submitted with the application and must demonstrate that:

4.1.3.1 The Charter Holder's board of directors will include a certificated teacher employed as a teacher at the Charter School and a Parent of a currently enrolled student of the school no later than the school's First Instructional Day;

4.1.3.2 The Applicant's business is restricted to the opening and operation of: Charter Schools, before school programs, after school programs and educationally related programs offered outside the traditional school year.

4.1.3.3 The board of directors will meet regularly and comply with the Freedom of Information Act, 29 Del.C. Chapter 100 in conducting the Charter School's business.

4.2 Student Performance

4.2.1 Minimum Requirements

4.2.1.1 The Applicant must agree and certify that it will comply with the requirements of the State Public Education Assessment and Accountability System pursuant to 14 Del. C. §§ 151, 152, 153, 154, and 157 and Department rules and regulations implementing Accountability, to specifically include the Delaware Student Testing Program.

4.2.1.2 The Applicant must demonstrate that it has established and will apply measurable student performance goals on the assessments administered pursuant to the Delaware Student Testing Program (DSTP), and a timetable for accomplishment of those goals.

4.2.1.3 At a minimum, the Applicant must demonstrate that the Charter School's average student performance on the DSTP assessments in each content area will meet the statewide average student performance of students in the same grades for each year of test administration.

4.2.2 Special Student Populations

4.2.2.1 An Applicant for a charter proposing enrollment preferences for students at risk of academic failure shall comply with the minimum performance goals established in Subsections 4.2.1.2 and 4.2.1.3 unless the Applicant demonstrates to the satisfaction of the Department and State Board that the Charter School will primarily serve students at risk of academic failure and that the school has established and will apply performance goals and timetables which are appropriate for the population of students to be served by the school.

4.2.2.2 An Applicant for a charter proposing an enrollment preference other than a preference for students at risk of academic failure shall comply with the Section. 4.2.1. In addition, the Department, with the approval of the State Board, may require such an Applicant to establish and apply additional and higher student performance goals

consistent with the needs and abilities of the student population likely to be served as a result of the proposed enrollment preferences.

4.2.3 If the Applicant plans to adopt or use performance standards or assessments in addition to the standards set by the Department or the assessments administered pursuant to the DSTP, the application must specifically identify those additional standards or assessments and include a planned baseline acceptable level of performance, measurable goals for improving performance and a timetable for accomplishing improvement goals for each additional indicator or assessment. The use of additional performance standards or assessments shall not replace, diminish or otherwise supplant the Charter School's obligation to meet the performance standards set by the Department or to use the assessments administered pursuant to the DSTP.

4.3 Educational Program

4.3.1 The application must demonstrate that the school's proposed program, curriculum and instructional strategies are aligned to State content standards, meet all grade appropriate State program requirements, and in the case of any proposed Charter High School, includes driver education. The educational program shall include the provision of extra instructional time for at risk students, summer school and other services required to be provided by school districts pursuant to the provisions of 14 Del. C. §153. Nothing in this subsection shall prevent an Applicant from proposing high school graduation requirements in addition to the state graduation requirements.

4.3.2 The application must demonstrate that the Charter School's educational program has the potential to improve student performance. The program's potential may be evidenced by:

4.3.2.1 Academically independent, peer reviewed studies of the program conducted by persons or entities without a financial interest in the educational program or in the proposed Charter School;

4.3.2.2 Prior successful implementation of the program; and

4.3.2.3 The Charter School's adherence to professionally accepted models of student development.

4.3.3 The application must demonstrate that the Charter School's educational program and procedures will comply with applicable state and federal laws regarding children with disabilities, unlawful discrimination and at risk populations, including but not limited to the following showings.

4.3.3.1 The school's plan for providing a free appropriate public education to students with disabilities in accordance with the Individuals with Disabilities Education Act, with 14 Del. C. Ch. 31 and with Department Regulation 925, specifically including a plan for having a continuum of educational placements available for children with

disabilities.

4.3.2.2 The school's plan for complying with Section 504 of the Rehabilitation Act of 1973 and with the Americans with Disabilities Act of 1990.

4.3.3.3 The school's plan for complying with Titles VI and VII of the Civil Rights Act of 1964.

4.3.3.4 The school's plan for complying with Title IX of the Education Amendments of 1972.

4.4 Economic Viability.

4.4.1 The application must demonstrate that the school is economically viable and shall include satisfactory documentation of the sources and amounts of all proposed revenues and expenditures during the school's first three years of school operation after opening for instructional purposes. There must be a budgetary reserve for contingencies of not less than 2.0% of the total annual amount of proposed revenues. In addition, the application shall document the sources and amounts of all proposed revenues and expenditures during the start-up period prior to the opening of the school.

4.4.2 The Department may require that the Applicant submit data demonstrating sufficient demand for Charter School enrollment if another Charter School is in the same geographic area as the Applicant's proposed school. Such data may include, but is not limited to, enrollment waiting lists maintained by other Charter Schools in the same geographic area and demonstrated parent interest in the Applicant's proposed school.

4.4.3 The application shall identify with specificity the proposed source(s) of any loan(s) to the Applicant including, without limitation, loans necessary to implement the provisions of any major contract as set forth below, and the date by which firm commitments for such loan(s) will be obtained.

4.4.4 The application shall contain a timetable with specific dates by which the school will have in place the major contracts necessary for the school to open on schedule. "Major contracts" shall include, without limitation, the school's contracts for equipment, services (including bus and food services, and related services for special education), leases of real and personal property, the purchase of real property, the construction and/or renovation of improvements to real property, and insurance. Contracts for bus and food services must be in place no later than August 1st of the year in which the school proposes to open and August 1st of each year thereafter. Contracts for the lease or purchase of real property, and/or the construction and/or renovation of improvements to real property must be in place sufficiently far in advance so that the Applicant might obtain any necessary final certificate of occupancy for the school premises no later than June 1st of the year in which the school proposes to open.

4.4.5 Reserved

4.5 Attendance, Discipline, Student Rights and Safety

4.5.1 The application must include a draft “Student Rights and Responsibilities Manual” that meets applicable constitutional standards regarding student rights and conduct, including but not limited to discipline, speech and assembly, procedural due process and applicable Department regulations regarding discipline.

4.5.1.1 The “Student Rights and Responsibilities Manual” must comply with the Gun- Free Schools Act of 1994 (20 U.S.C.A. §8921) and Department Regulation 878.

4.5.1.2 The application must include a plan to distribute the “Student Rights and Responsibilities Manual” to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the “Student Rights and Responsibilities Manual” at the time of enrollment.

4.5.2 The application must include the process and procedures the Charter School will follow to comply with the following laws:

4.5.2.1 Chapter 27 of Title 14 of the Delaware Code and applicable Department regulations regarding school attendance, including a plan to distribute attendance policies to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the attendance policy at the time of enrollment.

4.5.2.2 Chapter 85 of Title 11 of the Delaware Code and applicable Department regulations regarding criminal background checks for public school related employment.

4.5.2.3 Section 4112 of Title 14 of the Delaware Code and applicable Department regulations regarding the reporting of school crimes.

4.5.2.4 The Family Educational Rights and Privacy Act (FERPA) and implementing federal and Department regulations regarding disclosure of student records.

4.5.2.5 The provision of free and reduced lunch to eligible students pursuant to any applicable state or federal statute or regulation.

4.5.3 The requirement that the Applicant provide for the health and safety of students, employees and guests will be judged against the needs of the student body or population served. However, the services of at least one (1) full time nurse must be provided for each facility in which students regularly attend classes.

5.0 Nature of Charter

5.1 When granted, a charter is an authorization for the Charter Holder to open and operate a Charter School in accordance with the terms of the charter, including the terms of any conditions placed on the charter by the Department with the approval of the State Board.

5.1.1 It is the responsibility of the Charter Holder to notify the Department in writing of its compliance with any time frames or other terms or conditions contained in or imposed on the charter. The Department may require the Charter Holder to produce satisfactory evidence, including written documentation, of compliance.

5.2 Compliance with the charter, including compliance with the terms of any conditions placed on the charter, is a condition precedent to the authority to open and operate the Charter School. Failure to comply with the terms of the charter and any conditions placed on the charter, including deadlines, operates as a forfeiture of the authority to open the Charter School regardless of previous approval. These regulations are incorporated into and made a part of each charter approved by the Department with the consent of the State Board. A Charter School’s failure to comply with these regulations may be treated as a failure on the part of the school to comply with its charter.

6.0 Funding

6.1 The Department may withhold State and local funding from a Charter Holder not in compliance with the terms of the charter being funded, including compliance with any conditions placed on such charter.

6.2 The Department may withhold State and local funding from a Charter Holder while one or more of its charters is under formal review.

6.3 State and local funding of any charter on probationary status will be released in accordance with the terms of the probation.

6.4 Federal funding for a Charter Holder and under the control of the Department will be disbursed according to the laws, regulations and policies of the federal program providing the funding and the terms of any applicable federal grant approval including state requirements.

7.0 Reserved

8.0 Enrollment Preferences, Solicitations and Debts

8.1 Enrollment Preferences

8.1.1 Where a Charter School provides an enrollment preference for children of a Charter School’s founders, the preference is limited to the children of the individuals identified on the original charter application as having been involved in the preparation of the application and the development of the proposed Charter School, as provided in Section 4.1.2 of these regulations.

8.2 Solicitations.

8.2.1 Any person or entity soliciting contributions, gifts or other funding on behalf of or for the benefit of an existing or potential Charter School shall notify the person or entity solicited that enrollment of an individual student in the Charter School is not contingent on, or assured by, any such contribution, gift or other funding.

8.2.2 Written notices of fund raising activities for the benefit of a Charter School must contain the following statement: “The [name of school] is a public school. Contributions and gifts are not required for admission to the school and will in no way affect or improve a student’s opportunity for admission.”

8.3 Debts

8.3.1 Any person or entity offering a loan to a Charter School must be advised by the school that debts of the school are not debts of the State of Delaware and that neither the State nor any other agency or instrumentality of the State is liable for the repayment of any indebtedness.

9.0 Reserved

10.0 Renewals

10.1 Charters are granted for an initial period of 3 years of operation and are renewable every 5 years thereafter. A Charter School shall file it’s application for Renewal not less than six months prior to the end of any Renewal Period.

10.2 Renewals are only available to the current Charter Holder and may not be used to transfer a charter to a different legal entity.

10.3 Charters shall be renewed only if the school receives a satisfactory Performance Review and is not then on formal review.

11.0 Public Hearings

11.1 Any public hearing conducted by the Department pursuant to the provisions of the Charter School Law shall be conducted as a joint public hearing with the State Board of Education.

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C. SECTION 122(d)

1001 PARTICIPATION IN EXTRA-CURRICULAR ACTIVITIES

A. Type Of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of The Regulation

The Secretary of Education seeks to amend regulation 1001 Participation in Extra-Curricular Activities by permitting local school districts to decide on the academic eligibility criteria for participation in all extra curricular activities with the exception of interscholastic athletics. Academic eligibility criteria is established for interscholastic athletics in regulation 1051 DSSAA Senior High School Interscholastic Athletics, Section 4.0 Passing Work and in regulation 1052 DSSAA Junior High/Middle School

Interscholastic Athletics, Section 4.0 Passing Work.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses extra-curricular activities not state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses extra-curricular activities not equity issues.

3. Will the amended regulation help to ensure that all students’ health and safety are adequately protected? The amended regulation addresses extra-curricular activities not health and safety issues.

4. Will the amended regulation help to ensure that all students’ legal rights are respected? The amended regulation addresses extra-curricular activities not students’ legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The regulation was adopted and must be amended in the manner proposed.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? There is no cost to the state and to the local boards for compliance with the amended regulation.

1001 Participation in Extra-Curricular Activities

~~1.0 In order to be eligible for participation in non-credit granting extra-curricular activities, each participant shall pursue a regular course of study or its equivalent as approved by the Department of Education, and must be passing at least five credits beginning with the 1998-1999 school year. Two of these credits must be in the academic areas such as English, mathematics, science, or social studies.~~

~~2.0 Any twelfth grade student who wishes to participate in extra-curricular activities shall be passing all courses necessary for graduation from high school.~~

~~3.0 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in extra-curricular activities for the next marking period. In case of a conflict between the mark of a report period or regular final grade, the semester or final mark shall determine eligibility. When a student makes up a failure during the summer or earns the required credit or credits, the student shall become eligible.~~

~~4.0 Local school boards may establish requirements over and above these minimums prescribed for eligibility.~~

See 1 DE Reg. 173 (8/1/97)

1.0 Local school districts shall establish their own academic eligibility criteria for participation in extra-curricular activities for all extra-curricular activities except for interscholastic athletics. The academic eligibility criteria for interscholastic athletics is established in regulation 1051 DSSAA Senior High School Interscholastic Athletics, Section 4.0 Passing Work and in regulation 1052 DSSAA Junior High/Middle School Interscholastic Athletics, Section 4.0 Passing Work.

**PROFESSIONAL STANDARDS BOARD
EDUCATIONAL IMPACT ANALYSIS PURSUANT
TO 14 DEL.C. SECTION 122(d)**

1540 CERTIFICATION SCIENCE TEACHER**A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to amend regulation 336 of the *Regulations of the Department of*

Education. The amended regulation will also be renumbered to reflect its movement to the Professional Standards Board section of the regulations. The regulations concerns certification of science teachers.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement and concerns certification requirements for science teachers.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps ensure that science teachers meet established requirements for certification.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses teacher certification, not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses teacher certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

8. Will the amended regulation be consistent with and no an impediment to implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 Del.C. requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with amended regulation? There is no additional cost to local school boards for compliance with the amended regulation.

336 1540 Certification Science Teacher

Effective July 1, 1993

Amended July 1, 1998

Amended July 1, 2000

All secondary science certificates are valid in middle level science, Grades 5-8.

(Policy effective 7/1/00 – 6/30/02 only) (Policy effective 7/1/02 - 6/30/04 only)

1.0 The following shall be required for the Standard License.

1.1 Bachelor's degree from an accredited college and,

1.2 Professional Education

1.2.1 Completion of an approved teacher education program in Science or, A minimum of 24 semester hours to include Human Development, Methods of Teaching Secondary Science, Teaching of Reading in Science or Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and clinical experience/student teaching at the secondary (7-12) level and,

1.3 Specific Teaching Field

1.3.1 Major in the field of endorsement or,

1.3.2 Completion of an approved teacher education program in the field of endorsement or,

1.3.3 Completion of (at least) the semester hours indicated below for the field of endorsement:

1.3.3.1 Chemistry 45 semester hours (Required 9-12, valid Chemistry only Courses should include at least two 24 semester hours semesters of Inorganic Chemistry and one course chosen from each of the following pairs: Advanced Inorganic or Physical Chemistry, Organic Chemistry or Biochemistry, Quantitative Analysis or Instrumental Analysis Laboratory Safety 3 semester hours Biology 3 semester hours Physics 3 semester hours Mathematics * 6 semester hours Earth Sciences 3 semester hours Environmental Education 3 semester hours

1.3.3.2 Physics 45 semester hours (Required 9-12, valid Physics only) Courses should include at least one 24 semester hours semester in each of the following areas: Classical Thermodynamics, Electronics, Atomic Physics, and Nuclear Physics Laboratory Safety 3 semester hours Biology 3 semester hours Chemistry 3 semester hours Mathematics* 6 semester hours Earth Sciences 3 semester hours Environmental Education 3 semester hours

1.3.3.3 Earth Science 42 semester hours (Required 7-12, valid Earth Science only) Courses should include at least one 24 semester hours semester in each of the following areas: Geology, Geography, Climatology,

Meteorology, Oceanography, and Astronomy Laboratory Safety 3 semester hours Biology 3 semester hours Chemistry 3 semester hours Mathematics * 3 semester hours Physics/Physical Science 3 semester hours Environmental Education 3 semester hours

1.3.3.4 Biology 42 semester hours (Required 9-12, valid Biology and Life Science only) Courses should include at least one 24 semester hours semester in each of the following areas: Botany and Zoology, Ecology, Genetics, Biochemistry, and Physiology and, Laboratory Safety 3 semester hours Chemistry 3 semester hours Physics/Physical Science 3 semester hours Mathematics * 3 semester hours Earth Sciences 3 semester hours Environmental Education 3 semester hours

1.3.3.5 General Science 39 semester hours (Required 7-8 General Science, valid 7-8 Life Science, and recommended 5-6 in a middle school) and, Laboratory Safety 3 semester hours Biology 12 semester hours Chemistry/Physics/Physical Science 12 semester hours Mathematics * 3 semester hours Earth Science 6 semester hours Environmental Education 3 semester hours

1.3.3.6 Physical Science 42 semester hours (Required 9-12, Physical Science only, not Physics) Chemistry - coursework to 12 semester hours include content in structure of matter, bonding acids and bases, chemical reactions, equations, periodicity metals, non-metals and thermodynamics Physics - coursework to include 12 semester hours content in heat, light, waves electricity, mechanics, sound, and simple machines Laboratory Safety 3 semester hours Biology 3 semester hours Mathematics * 6 semester hours Earth Science 3 semester hours Environmental Education 3 semester hours * College Algebra or above

1.3.3.7 Earth Science: Teachers in all science areas shall be required to complete at least one Earth Science course. The rationale for this requirement is the fact that Earth Science is generally required in middle-level schools for Delaware students. A background in this area will allow a teacher to relate topics in Physical Science, Chemistry, etc. to Earth Science concepts. Either Geology or Climatology provides the best teacher foundation in Earth Science, but Physical Geography and Physical Oceanography are adequate for doing so.

1.3.3.8 Environmental Education: Teachers in science areas shall be required to complete appropriate coursework in the area of Environmental Education. This can include the following: History/Philosophy of the Conservation Movement Appreciative Understanding of Natural Resources Relationship of Natural Resources to Economic Structure Importance of Conservation in National/International Setting Natural Resource Management: Techniques, Need for, and Types of Controls Role and Importance of Resource use in Planning for the Future

2.0 Licenses that may be issued for positions in these areas include Standard and Limited Standard.

2.1 The Limited Standard license may be issued upon request of a Delaware public school district for a teacher employed for this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.

**PROFESSIONAL STANDARDS BOARD
EDUCATIONAL IMPACT ANALYSIS PURSUANT
TO 14 DEL.C. SECTION 122(d)**

**1541 LIMITED STANDARD CERTIFICATE FOR
MIDDLE LEVEL MATHEMATICS AND SCIENCE
AND SECONDARY SCIENCE CERTIFICATE FOR
MIDDLE LEVEL SCIENCE**

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to amend regulation 391 of the *Regulations of the Department of Education*. The amended regulation will also be renumbered to reflect its movement to the Professional Standards Board section of the regulations. The regulations concerns certification of science teachers.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement and concerns certification requirements for mathematics and science teachers.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps ensure that mathematics and science teachers meet established requirements for certification.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses teacher certification, not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses teacher certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the

local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

8. Will the amended regulation be consistent with and no an impediment to implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 Del. C. requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with amended regulation? There is no additional cost to local school boards for compliance with the amended regulation.

~~391~~ 1541 Limited Standard Certificate for Middle Level Mathematics and Science and Secondary Science Certificate for Middle Level Science**1.0 Limited Standard Certificate for middle level mathematics and science and Secondary Science Certificate for middle level science.**

1.1 Limited Standard Certificates for Middle Level Math/Science shall be issued for 1 year to a teacher holding a Standard or Professional Status Certificate in either Elementary (grades 1-8) or Middle Level (grades 5-8) who is assigned to teach grade 7 and/or 8 math and/or science, regardless of the number of credits needed for full certification. During the term of the Limited Standard Certificate, the teacher shall work to complete the requirements for the Standard Certificate in the area(s) of the assignment. These conditions will be effective ~~7/1/00 through 6/30/02~~ 7/1/02 through 6/30/04.

1.2 All secondary science certificates shall be valid in middle level science, grades 5-8 from ~~7/1/00 through 6/30/02~~ only 7/1/02 through 6/30/04 only.

**PROFESSIONAL STANDARDS BOARD
EDUCATIONAL IMPACT ANALYSIS PURSUANT
TO 14 DEL. C. SECTION 122 (d)**

1594 DELAWARE ADMINISTRATOR STANDARDS

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to amend regulation 394 of the *Regulations of the Department of Education*. The amended regulation will also be renumbered to reflect its movement to the Professional Standards Board section of the regulations. The regulation concerns standards for administrators.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement and concerns the establishment of uniform standards for the performance of school administrators.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps ensure that all school administrators demonstrate high standards of performance.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses administrator standards, not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses administrator standards, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the

consent of the State Board of Education.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 Del.C. requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? There is no additional cost to local school boards for compliance with the amended regulation.

~~394 Delaware Administrator Standards~~

~~1.0 Systemic Leadership: An educational leader possesses the knowledge and skills to foster vision and purpose, to achieve common goals, to frame problems, to utilize information, to exercise leadership processes, and to promote teamwork to achieve the vision.~~

~~1.1 The educational leader has knowledge and understanding of:~~

~~1.1.1 Purposes of education.~~

~~1.1.2 Strategic planning and vision building.~~

~~1.1.3 Learning communities.~~

~~1.1.4 Organizational change processes.~~

~~1.1.5 Consensus building and negotiating.~~

~~1.1.6 Leadership and motivation.~~

~~1.1.7 Problem framing and problem resolution.~~

~~1.1.8 Data collection, analysis, and interpretation.~~

~~1.1.9 Social and political influences affecting schools.~~

~~1.2 The educational leader prepares for and acts to:~~

~~1.2.1 Create a shared vision of learning that promotes high levels of success for all students.~~

~~1.2.2 Develop a school community focusing on teaching and learning.~~

~~1.2.3 Facilitate collegiality and teamwork by creating conditions that motivate staff, students, and families to achieve the shared vision.~~

~~1.2.4 Utilize the change process to improve the organization.~~

~~1.2.5 Frame, analyze, and resolve issues using problem-solving techniques and decision-making skills.~~

~~1.2.6 Gather, analyze, and utilize data for strategic planning and decision-making using appropriate technologies.~~

1.2.7 Communicate the vision and core beliefs of the school to the school community.

1.2.8 Recognize potential opportunities and barriers to achieving the school community's vision, and initiate strategies to address them.

1.2.9 Monitor and revise the vision and mission regularly with the school community.

2.0 Instructional Leadership: An educational leader possesses the knowledge and skills to facilitate the design of appropriate standards-based curriculum, to develop a positive learning environment, to initiate with faculty a variety of instructional programs, to assess outcomes, and to plan professional development activities with staff.

2.1 The educational leader has knowledge and understanding of:

2.1.1 Student growth and development.

2.1.2 Applied learning theories.

2.1.3 Curriculum design, implementation, evaluation and refinement.

2.1.4 Instructional principles and strategies.

2.1.5 Instructional technologies.

2.1.6 Special needs of diverse student populations.

2.1.7 Supervision and performance appraisal strategies.

2.1.8 Measurement theory and assessment related issues.

2.1.9 Adult learning and professional development strategies.

2.1.10 Delaware content standards.

2.2 The educational leader prepares for and acts to:

2.2.1 Model a strong commitment to teaching and learning.

2.2.2 Collaborate with staff to plan and implement curriculum based on student needs, research, informed practice, governmental policies, and the recommendations of national groups.

2.2.3 Develop collaboratively a learning organization that focuses on improving instruction, incorporates best practice, and promotes student achievement.

2.2.4 Incorporate various staffing patterns, student grouping plans, scheduling patterns, and organizational structures to support teaching strategies appropriate to desired student outcomes.

2.2.5 Facilitate with teachers the selection of learning materials and experiences appropriate for various learning styles and specific student needs.

2.2.6 Promote learning responsive to gender, ethnicity, culture, socio-economic needs, and exceptionalities.

2.2.7 Support instruction that develops thinking skills, promotes problem solving, and applies learning.

2.2.8 Assure a variety of assessment strategies to

measure desired student outcomes.

2.2.9 Collect and analyze student data to improve curriculum and instruction.

2.2.10 Incorporate technologies into the instructional system.

2.2.11 Integrate co-curricular and extra-curricular activities with the instructional program.

2.2.12 Facilitate the development of professional growth programs which promote continuous improvement.

2.2.13 Utilize supervisory and performance appraisal techniques consistent with state policy.

3.0 Community and Political Leadership: An educational leader possesses the knowledge and skills to act in accordance with legal provisions and statutory requirements, to influence public policy, to apply regulatory standards, to understand schools as political systems, to inform and involve parents and community groups, and to develop public relations and media relations programs.

3.1 The educational leader has knowledge and understanding of:

3.1.1 Federal and state constitutional, statutory and regulatory provisions, and judicial decisions governing education.

3.1.2 Common law and contractual requirements.

3.1.3 Political, social, cultural and economic issues and forces affecting education.

3.1.4 Policy formulation, implementation and evaluation at the federal, state and local levels.

3.1.5 Public school governance and school board functions.

3.1.6 Family and community involvement in appropriate policy development, program planning and assessment procedures.

3.1.7 Conditions and dynamics of the diverse school community.

3.1.8 School communities as political systems.

3.1.9 Public and media relations.

3.2 The educational leader prepares for and acts to:

3.2.1 Apply federal and state constitutional, statutory and regulatory provisions, judicial decisions, common law requirements, and contractual agreements to schools and school personnel.

3.2.2 Propose and influence policies that benefit students and schools.

3.2.3 Interact with the diverse school community to benefit students.

3.2.4 Develop relationships with families to strengthen educational commitment and opportunity.

3.2.5 Identify and influence key opinion leaders and organizations to generate support for school goals and programs.

3.2.6 Assure that ethical standards be applied to the development and implementation of policies.

3.2.7 Involve the school community, as appropriate, in planning and assessing school policies and programs.

3.2.8 Articulate the district and school educational vision and program initiatives.

3.2.9 Develop partnerships with public and private organizations to improve educational opportunities for all students.

3.2.10 Work with local governing boards.

3.2.11 Implement staff communications and public relations strategies for the benefit of students and schools.

3.2.12 Communicate with parents, the community, and school personnel, utilizing available technologies.

4.0 Organizational Leadership: An educational leader possesses the knowledge and skills to establish and improve organizational structure and processes, to design and implement operational plans, to secure and manage resources, and to engage others in the decision making process.

4.1 The educational leader has knowledge and understanding of:

4.1.1 Organizational and management systems and technologies.

4.1.2 Operational procedures.

4.1.3 Budget planning and management processes.

4.1.4 Management techniques.

4.1.5 Facilities and support services management.

4.2 The educational leader prepares for and acts to:

4.2.1 Establish operational plans and procedures to accomplish goals.

4.2.2 Implement management processes and procedures which recognize the value of decentralized and centralized decisions.

4.2.3 Use collaborative processes to develop procedures and make decisions.

4.2.4 Prioritize individual and organizational time to accomplish educational goals.

4.2.5 Review organizational structures and management systems regularly.

4.2.6 Develop a budget planning process which reflects school and district priorities.

4.2.7 Perform budget management and reporting functions.

4.2.8 Apply technologies to management operations.

4.2.9 Utilize the change process for improving organizational structure and management.

4.2.10 Create a safe school environment.

4.2.11 Manage collective bargaining agreements.

4.2.12 Manage capital goods and support services.

5.0 Interpersonal and Ethical Leadership: An educational leader possesses the knowledge and interpersonal skills to facilitate teamwork and collegiality and the attributes to act

ethically and with integrity.

5.1 The educational leader has knowledge and understanding of:

5.1.1 Professional codes of ethics.

5.1.2 Ethical frameworks and perspectives.

5.1.3 Communication processes and skills.

5.1.4 Consensus building and negotiating strategies.

5.1.5 Interpersonal processes.

5.1.6 Conflict management.

5.1.7 Counseling and mentoring.

5.1.8 Values of the diverse school community.

5.1.9 Leadership by example.

5.2 The educational leader prepares for and acts to:

5.2.1 Demonstrate by example a high standard of professional and personal ethics.

5.2.2 Make decisions within an ethical framework.

5.2.3 Develop an organizational ethos to guide school policies and programs, and to encourage a positive school culture.

5.2.4 Create a culture of trust and open communication.

5.2.5 Exhibit sensitivity, respect, tact, and consistency in interpersonal relations.

5.2.6 Use effective written, verbal and nonverbal communication.

5.2.7 Foster continuous professional growth.

5.2.8 Develop leadership opportunities for staff.

5.2.9 Utilize the knowledge, skills, and experiences of the diverse school community.

5.2.10 Resolve conflicts and tensions.

5.2.11 Promote awareness of and sensitivity to ethnicity, gender, culture, and exceptionalities.

5.2.12 Utilize counseling and mentoring techniques.

5.2.13 Examine and consider the prevailing values of the community.

5.2.14 Promote integrity and ethical behavior of others within the school community.

5.2.15 Celebrate student and staff accomplishments.

1594 DELAWARE ADMINISTRATOR STANDARDS

1.0 The Interstate School Leaders Licensure Consortium (ISLLC) standards¹ for school leaders establish a common set of knowledge, skills and attributes expected of school leaders. These nationally recognized standards describe standards established for Delaware school leaders, and serve as the foundation for preparation and appraisal of school leaders. In accordance with 14 Del. C § 1205, this regulation shall be applied to all school administrators employed within the public schools and charter schools of the State of

Delaware.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Administrator”: means an educator who is licensed and certified as an administrator and is employed in an instructional role in a school district or charter school.

3.0 Standard 1: A school administrator is an educational leader who promotes the success of all students by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community.

3.1 The administrator has knowledge and understanding of:

3.1.1 Learning goals in a pluralistic society.

3.1.2 The principles of developing and implementing strategic plans.

3.1.3 Systems theory.

3.1.4 Information sources, data collection, and data analysis strategies.

3.1.5 Effective communication.

3.1.6 Effective consensus-building and negotiation skills.

3.2 The administrator believes in, values, and is committed to:

3.2.1 The educability of all.

3.2.2 A school vision of high standards of learning.

3.2.3 Continuous school improvement.

3.2.4 The inclusion of all members of the school community.

3.2.5 Ensuring that students have the knowledge, skills, and values needed to become successful adults.

3.2.6 A willingness to continuously examine one’s own assumptions, beliefs, and practices.

3.2.7 Doing the work required for high levels of personal and organizational performance.

3.3 The administrator facilitates processes and engages in activities ensuring that:

3.3.1 The vision and mission of the school are effectively communicated to staff, parents, students, and community members.

3.3.2 The vision and mission are communicated through the use of symbols, ceremonies, stories, and similar activities.

3.3.3 The core beliefs of the school vision are modeled for all stakeholders.

3.3.4 The vision is developed with and among stakeholders.

3.3.5 The contributions of school community members to the realization of the vision are recognized and

celebrated.

3.3.6 Progress toward the vision and mission is communicated to all stakeholders.

3.3.7 The school community is involved in school improvement efforts.

3.3.8 The vision shapes the educational programs, plans, and actions.

3.3.9 An implementation plan is developed in which objectives and strategies to achieve the vision and goals are clearly articulated.

3.3.10 Assessment data related to student learning are used to develop the school vision and goals.

3.3.11 Relevant demographic data pertaining to students and their families are used in developing the school mission and goals.

3.3.12 Barriers to achieving the vision are identified, clarified, and addressed.

3.3.13 Needed resources are sought and obtained to support the implementation of the school mission and goals.

3.3.14 Existing resources are used in support of the school vision and goals.

3.3.15 The vision, mission, and implementation plans are regularly monitored, evaluated, and revised.

4.0 Standard 2: A school administrator is an educational leader who promotes the success of all students by advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth.

4.1 The administrator has knowledge and understanding of:

4.1.1 Student growth and development.

4.1.2 Applied learning theories.

4.1.3 Applied motivational theories.

4.1.4 Curriculum design, implementation, evaluation, and refinement.

4.1.5 Principles of effective instruction.

4.1.6 Measurement, evaluation, and assessment strategies.

4.1.7 Diversity and its meaning for educational programs.

4.1.8 Adult learning and professional development models.

4.1.9 The change process for systems, organizations, and individuals.

4.1.10 The role of technology in promoting student learning and professional growth.

4.1.11 School cultures.

4.2 The administrator believes in, values, and is committed to:

4.2.1 Student learning as the fundamental purpose of schooling.

4.2.2 The proposition that all students can learn.

4.2.3 The variety of ways in which students can learn.

4.2.4 Life long learning for self and others.

4.2.5 Professional development as an integral part of school improvement.

4.2.6 The benefits that diversity brings to the school community.

4.2.7 A safe and supportive learning environment.

4.2.8 Preparing students to be contributing members of society.

4.3 The administrator facilitates processes and engages in activities ensuring that:

4.3.1 All individuals are treated with fairness, dignity, and respect.

4.3.2 Professional development promotes a focus on student learning consistent with the school vision and goals.

4.3.3 Students and staff feel valued and important.

4.3.4 The responsibilities and contributions of each individual are acknowledged.

4.3.5 Barriers to student learning are identified, clarified, and addressed.

4.3.6 Diversity is considered in developing learning experiences.

4.3.7 Life long learning is encouraged and modeled.

4.3.8 There is a culture of high expectations for self, student, and staff performance.

4.3.9 Technologies are used in teaching and learning.

4.3.10 Student and staff accomplishments are recognized and celebrated.

4.3.11 Multiple opportunities to learn are available to all students.

4.3.12 The school is organized and aligned for success.

4.3.13 Curricular, co-curricular, and extra-curricular programs are designed, implemented, evaluated, and refined.

4.3.14 Curriculum decisions are based on research, expertise of teachers, and the recommendations of learned societies.

4.3.15 The school culture and climate are assessed on a regular basis.

4.3.16 A variety of sources of information is used to make decisions.

4.3.17 Student learning is assessed using a variety of techniques.

4.3.18 Multiple sources of information regarding performance are used by staff and students.

4.3.19 A variety of supervisory and evaluation models is employed.

4.3.20 Pupil personnel programs are developed to meet the needs of students and their families.

5.0 Standard 3: A school administrator is an educational leader who promotes the success of all students by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment.

5.1 The administrator has knowledge and understanding of:

5.1.1 Theories and models of organizations and the principles of organizational development.

5.1.2 Operational procedures at the school and district level.

5.1.3 Principles and issues relating to school safety and security.

5.1.4 Human resources management and development.

5.1.5 Principles and issues relating to fiscal operations of school management.

5.1.6 Principles and issues relating to school facilities and use of space.

5.1.7 Legal issues impacting school operations.

5.1.8 Current technologies that support management functions.

5.2 The administrator believes in, values, and is committed to:

5.2.1 Making management decisions to enhance learning and teaching.

5.2.2 Taking risks to improve schools.

5.2.3 Trusting people and their judgments.

5.2.4 Accepting responsibility.

5.2.5 High quality standards, expectations, and performances.

5.2.6 Involving stakeholders in management processes.

5.2.7 A safe environment.

5.3 The administrator facilitates processes and engages in activities ensuring that:

5.3.1 Knowledge of learning, teaching, and student development is used to inform management decisions.

5.3.2 Operational procedures are designed and managed to maximize opportunities for successful learning.

5.3.3 Emerging trends are recognized, studied, and applied as appropriate.

5.3.4 Operational plans and procedures to achieve the vision and goals of the school are in place.

5.3.5 Collective bargaining and other contractual agreements related to the school are effectively managed.

5.3.6 The school plan, equipment, and support systems operate safely, efficiently, and effectively.

5.3.7 Time is managed to maximize attainment of organizational goals.

5.3.8 Potential problems and opportunities are identified.

5.3.9 Problems are confronted and resolved in a timely manner.

5.3.10 Financial, human, and material resources are aligned to the goals of schools.

5.3.11 The school acts entrepreneurally to support continuous improvement.

5.3.12 Organizational systems are regularly monitored and modified as needed.

5.3.13 Stakeholders are involved in decisions affecting schools.

5.3.14 Responsibility is shared to maximize ownership and accountability.

5.3.15 Effective problem-framing and problem-solving skills are used.

5.3.16 Effective conflict resolution skills are used.

5.3.17 Effective group-process and consensus-building skills are used.

5.3.18 Effective communication skills are used.

5.3.19 There is effective use of technology to manage school operations.

5.3.20 Fiscal resources of the school are managed responsibly, efficiently, and effectively.

5.3.21 A safe, clean, and aesthetically pleasing school environment is created and maintained.

5.3.22 Human resource functions support the attainment of school goals.

5.3.23 Confidentiality and privacy of school records are maintained.

6.0 Standard 4: A school administrator is an educational leader who promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources.

6.1 The administrator has knowledge and understanding of:

6.1.1 Emerging issues and trends that potentially impact the school community.

6.1.2 The conditions and dynamics of the diverse school community.

6.1.3 Community resources.

6.1.4 Community relations and marketing strategies and processes.

6.1.5 Successful models of school, family, business, community, government and higher education partnerships.

6.2 The administrator believes in, values, and is committed to:

6.1.1 Schools operating as an integral part of the larger community.

6.1.2 Collaboration and communication with

families.

6.1.3 Involvement of families and other stakeholders in school decision-making processes.

6.1.4 The proposition that diversity enriches the school.

6.1.5 Families as partners in the education of their children.

6.1.6 The proposition that families have the best interests of their children in mind.

6.1.7 Resources of the family and community needing to be brought to bear on the education of students.

6.1.8 An informed public.

6.3 The administrator facilitates processes and engages in activities ensuring that:

6.3.1 High visibility, active involvement, and communication with the larger community is a priority.

6.3.2 Relationships with community leaders are identified and nurtured.

6.3.3 Information about family and community concerns, expectations, and needs is used regularly.

6.3.4 There is outreach to different business, religious, political, and service agencies and organizations.

6.3.5 Credence is given to individuals and groups whose values and opinions may conflict.

6.3.6 The school and community serve one another as resources.

6.3.7 Available community resources are secured to help the school solve problems and achieve goals.

6.3.8 Partnerships are established with area businesses, institutions of higher education, and community groups to strengthen programs and support school goals.

6.3.9 Community youth family services are integrated with school programs.

6.3.10 Community stakeholders are treated equitably.

6.3.11 Diversity is recognized and valued.

6.3.12 Effective media relations are developed and maintained.

6.3.13 A comprehensive program of community relations is established.

6.3.14 Public resources and funds are used appropriately and wisely.

6.3.15 Community collaboration is modeled for staff.

6.3.16 Opportunities for staff to develop collaborative skills are provided.

7.0 Standard 5: A school administrator is an educational leader who promotes the success of all students by acting with integrity, with fairness, and in an ethical manner.

7.1 The administrator has knowledge and understanding of:

7.1.1 The purpose of education and the role of leadership in modern society.

7.1.2 Various ethical frameworks and perspectives on ethics.

7.1.3 The values of the diverse school community.

7.1.4 Professional codes of ethics.

7.1.5 The philosophy and history of education.

7.2 The administrator believes in, values, and is committed to:

7.2.1 The ideal of the common good.

7.2.2 The principles in the Bill of Rights.

7.2.3 The right of every student of a free, quality education.

7.2.4 Bringing ethical principles to the decision-making process.

7.2.5 Subordinating one's own interest to the good of the school community.

7.2.6 Accepting the consequences for upholding one's principles and actions.

7.2.7 Using the influence of one's office constructively and productively in the service of all students and their families.

7.2.8 Development of a caring school community.

7.3 The administrator:

7.3.1 Examines personal and professional values.

7.3.2 Demonstrates a personal and professional code of ethics.

7.3.3 Demonstrates values, beliefs, and attitudes that inspire others to higher levels of performance.

7.3.4 Serves as a role model.

7.3.5 Accepts responsibility for school operations.

7.3.6 Considers the impact of one's administrative practices on others.

7.3.7 Uses the influence of the office to enhance the educational program rather than for personal gain.

7.3.8 Treats people fairly, equitably, and with dignity and respect.

7.3.9 Protects the rights and confidentiality of students and staff.

7.3.10 Demonstrates appreciation for and sensitivity to the diversity in the school community.

7.3.11 Recognizes and respects the legitimate authority of others.

7.3.12 Examines and considers the prevailing values of the diverse school community.

7.3.13 Expects that others in the school community will demonstrate integrity and exercise ethical behavior.

7.3.14 Opens the school to public scrutiny.

7.3.15 Fulfills legal and contractual obligations.

7.3.16 Applies laws and procedures fairly, wisely, and considerately.

8.0 Standard 6: A school administrator is an educational leader who promotes the success of all students by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural contexts.

8.1 The administrator has knowledge and understanding of:

8.1.1 Principles of representative governance that undergird the system of American schools.

8.1.2 The role of public education in developing and renewing a democratic society and an economically productive nation.

8.1.3 The law as related to education and schooling.

8.1.4 The political, social, cultural and economic systems and processes that impact schools.

8.1.5 Models and strategies of change and conflict resolution as applied to the larger political, social, cultural and economic contexts of schooling.

8.1.6 Global issues and forces affecting teaching and learning.

8.1.7 The dynamics of policy development and advocacy under our democratic political system.

8.1.8 The importance of diversity and equity in a democratic society.

8.2 The administrator believes in, values, and is committed to:

8.2.1 Education as a key to opportunity and social mobility.

8.2.2 Recognizes a variety of ideas, values, and cultures.

8.2.3 Importance of a continuing dialogue with other decision makers affecting education.

8.2.4 Actively participating in the political and policy-making context in the service of education.

8.2.5 Using legal systems to protect student rights and improve student opportunities.

8.3 The administrator facilitates processes and engages in activities ensuring that:

8.3.1 The environment in which schools operate is influenced on behalf of students and their families.

8.3.2 Communication occurs among the school community concerning trends, issues, and potential changes in the environment in which schools operate.

8.3.3 There is ongoing dialogue with representatives of diverse community groups.

8.3.4 The school community works within the framework of policies, laws, and regulations enacted by local, state, and federal authorities.

8.3.5 Public policy is shaped to provide quality education for students.

8.3.6 Lines of communication are developed with decision makers outside the school community.

¹The Interstate School Leaders Licensure Consortium Standards for School Leaders. Washington, D.C.: Council of Chief State School Officers, 1996.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES**

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 107 (31 Del.C. §107)

Public Notice

Delaware Medicaid/Medical Assistance Programs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, the Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the policy of the Transitional Medicaid Program as it relates to the Health Insurance Flexibility and Accountability (HIFA) Demonstration waiver.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by July 31, 2002.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**Summary of Proposed Change: DSSM 15200 -
Transitional Medicaid**

Transitional Medicaid is a mandatory extension of coverage for up to 12 months for families who lose Medicaid due to countable earnings. Under the TANF/DABC waiver, coverage was extended for up to 24 months. The TANF/DABC waiver expires on September 30, 2002. This means that effective October 1, 2002, the Transitional Medicaid extension will be reduced to a period of up to 12 months. With this regulatory change, DSS plans to restore this additional 12-month extension under the recently submitted 1115 HIFA Waiver.

REVISIONS:

15200 Transitional Medicaid

The Family Support Act of 1988, PL 100-485, mandated that effective April 1, 1990, states provide health care coverage known as Transitional Medical Assistance for up to twelve months for families who become ineligible for AFDC due to increased earnings, increased hours of employment, or loss of earned income disregards.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, repealed the AFDC program and replaced it with a program of block grants to states for Temporary Assistance for Needy Families (TANF). Delaware implemented its TANF program, Delaware's A Better Chance Welfare Reform Program (DABC), on March 10, 1997.

Prior to PRWORA, a family's eligibility for Transitional Medicaid was linked to receipt of AFDC. Under PRWORA, a family's eligibility for transitional Medicaid is linked to receipt of Medicaid under Section 15120, "Low Income Families with Children under Section 1931".

The eligibility group described in "Low Income Families with Children under Section 1931", will be referred to as "receiving Medicaid under Section 1931" throughout this section. ~~Any family eligible for and receiving DABC benefits is also eligible for Medicaid under Section 1931 and may be found eligible for Transitional Medicaid. This means references to "Medicaid under Section 1931" also refers to families receiving DABC.~~

Delaware's welfare reform waiver, "Delaware's A Better Chance Welfare Reform Program" (DABC) includes included a modification to the length of the Transitional Medicaid period. The DABC waiver extends extended Transitional Medicaid benefits for up to 24 months. This waiver expires on September 30, 2002. Effective October 1, 2002, Transitional Medicaid coverage extends for up to one year. The year is divided into two periods of six months each.

Families must meet the initial eligibility requirements described in this section to receive the first ~~±~~ six months of coverage. Families can be eligible when their income exceeds either 185% of the standard of need or the standard of need. ~~The standard of need used is the same as the DABC standard of need.~~

To continue to receive Medicaid for the second ~~±~~ six months, the family's gross earned income less dependent care costs must be at or below 185% FPL. Dependent care costs are for the care of dependent children or incapacitated persons living in the home. Family income will be budgeted prospectively.

15200.1 Initial Eligibility for First Six Months

~~NOTE: All references to "Medicaid under Section 1931" includes families determined eligible under Section~~

~~15120, "Low Income Families with Children under Section 1931". and families who receive DABC benefits. DABC families are also eligible for Medicaid under Section 1931.~~

At the time a family becomes ineligible for Medicaid under Section 1931 determine whether the family meets the following three requirements.

15200.1.2 Increased Earnings or Loss of Earned Income Disregards

The family must become ineligible for Medicaid under Section 1931 because of an increase in the hours of or increased income from the employment of the caretaker relative or because a member of the family loses the \$30 and 1/3 earned income disregard or the \$30 disregard.

This happens when:

a. an increase in earned income (or countable earned income because of loss of disregard) makes the family ineligible or

b. an increase in other income when combined with an increase in earned income (or countable earned income because of loss of disregard) makes the family ineligible. The caretaker relative whose earnings cause ineligibility must meet the three out of six months requirement in order for the family to receive Transitional Medicaid.

The increase in earned income (or hours of work or loss of the disregards) must have a causative effect on the loss of 1931 eligibility. Follow these steps to determine if an increase in income (or other factor) had a causative effect.

1. Determine if the increase in income (or hours of employment or loss of the disregards) would have resulted in loss of 1931 eligibility if all other factors in the case remained the same (i.e., there was no other change in income, no change in family composition, no change in 1931 standards, etc.).

If yes, the family is eligible to receive Transitional Medicaid.

If no, go to step 2.

2. Determine if events other than the increase in income (or hours of employment or loss of the disregards) would have resulted in loss of 1931 eligibility if the income (hours or disregards) had stayed the same.

If yes, the family is not eligible to receive Transitional Medicaid.

If no, go to step 3.

3. Determine if the family is ineligible for 1931 when all changes are considered.

If yes, the family is eligible for Transitional Medicaid. The increase in earnings (or hours of employment or loss of the disregards) was essential to the loss of 1931 eligibility. Without that increase, the family would not have lost 1931 eligibility.

If no, the family is still eligible for 1931.

15200.3 Eligibility Determination

Families who lose Medicaid under Section 1931 because of earnings or loss of earned income disregards are eligible for transitional Medicaid when their income exceeds either 185% of the standard of need OR the standard of need. ~~The standard of need used is the same as the DABC standard of need.~~

15200.4 First Month Of Transitional Medicaid

Transitional Medicaid begins with the month of ineligibility for Medicaid under Section 1931 due to an increase in earned income or loss of earned income disregards. The month of ineligibility for Medicaid under Section 1931 is the month in which the family's income exceeds either 185% of the standard of need or the standard of need. ~~The standard of need for Medicaid under Section 1931 is the same as the DABC standard of need.~~

Someone who is not timely in reporting the start of employment or increased wages could have their family's transitional benefits reduced so that they only receive the 24 12 months of transitional coverage from when they should have been closed. But, we will not totally disqualify a family.

15200.5 Eligibility During First ~~12~~ Six Month Period

The family will receive Transitional Medicaid without any reapplication for the first ~~12~~ six months. The family must be notified when they lose eligibility for Medicaid under Section 1931 that they are eligible for Transitional Medicaid and the reasons why the benefits could be terminated. DCIS will automatically notify Transitional Medicaid families and issue cards for the family members. The notice will include information about termination of benefits.

15200.5.1 Child Living in the Home

To continue to receive Medicaid throughout the first ~~12~~ six month period the following conditions must be met in addition to the initial eligibility requirements:

there is a child living in the home.

The rules of Medicaid under Section 1931 are used to determine if a child is living in the home. When it is determined that a family no longer has a child living in the home, the family is no longer eligible under this program. The case must be reviewed to determine if the family members are eligible for Medicaid under another program.

15200.6 Eligibility During Second ~~12~~ Six Month Period

~~A redetermination of eligibility must be completed at the end of the first 12-month period.~~

To continue to receive Medicaid during the second ~~12~~ six month period, the conditions listed in 15200.6.1, 15600.6.2 and 15600.6.3 must be met in addition to the initial eligibility requirements.

15200.6.1 Child Living in the Home

To continue to receive Medicaid throughout the second ~~12~~ six month period there must be a child living

in the home.

The rules of Medicaid under Section 1931 are used to determine if a child is living in the home. When it is determined that a family no longer has a child living in the home, the family is no longer eligible under this program. The case must be reviewed to determine if the family members are eligible for Medicaid under another program.

15200.6.2 Employment of Caretaker Relative

To continue to receive Medicaid throughout the second ~~12-~~ six month period a caretaker relative must be employed during each month unless good cause exists.

15200.6.3 Limit on Gross Monthly Earnings

The family's gross monthly earnings (less the monthly costs of necessary dependent care) are at or below 185% of the Federal Poverty Level (FPL) and continue to be at or below 185% FPL throughout the second ~~12-~~ six month period. The FPL is effective each July for Transitional Medicaid.

There are no limits on necessary dependent care costs. Prospective budgeting is used to determine family income. Do not add unearned income to earned income. Count the earned income of all family members living in the home who were members of the family unit the month the family became ineligible for Medicaid under Section 1931 and any individual who would be included in the caretaker relative's assistance unit if the family were now applying for Medicaid under Section 1931.

Exception: Do not count the earned income of a dependent child, regardless of student status.

15200.7 ~~24-~~ 12-Month Period of Eligibility

A family gets ~~24~~ 12 months of Transitional Medicaid from the month of ineligibility for Medicaid under Section 1931, even if they become eligible again for Medicaid under Section 1931. The clock on the ~~24~~12-month period does not stop running when eligibility for Medicaid under Section 1931 is reestablished. The ~~24~~ 12 months of Transitional Medicaid run concurrently with months of eligibility for Medicaid under Section 1931.

If the family again loses eligibility for Medicaid under Section 1931 for non-work reasons, the transitional benefit period is unaffected. If the family is terminated again for earned income reasons, a new transitional period may begin.

15200.8 Termination of Eligibility

Eligibility for Transitional Medicaid may be terminated in either the first or second ~~12-~~ six month period for the reasons described below.

15200.8.1 First ~~12-~~ Six-Month Period

Eligibility for Transitional Medicaid will be terminated during the first ~~12-~~ six month period if the family no longer has a child living in the home. Use the definition for child as defined under Section 1931 Medicaid. A child is under age 18 or is under age 19 and who is still a full-time student in high school, GED, or equivalent program and will

graduate prior to his or her 19th birthday. Emancipated minors are considered adults.

Eligibility will also be terminated if the family is found to have received Medicaid under Section 1931 "fraudulently" in the preceding six months. Fraud is defined at the end of this section.

15200.8.2 Second ~~12-~~ Six Month Period

Eligibility for Transitional Medicaid will be terminated if:

- the family no longer has a child living in the home
- the caretaker relative is no longer employed and good cause does not apply
- the family's monthly gross earned income minus dependent care costs exceeds 185% FPL

We must explore eligibility for any other Medicaid program before Transitional Medicaid is terminated.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 107 (31 **Del.C.** §107)

PUBLIC NOTICE

Delaware Medicaid/Medical Assistance Programs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, the Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to revise the following Medicaid policies related to the Children's Community Alternative Disability Program. Specifically, the text of the Children's Community Alternative Disability Program is being revised to bring the language of the policy into federal compliance with 42 CFR §435.225. The proposed changes cover re-numbering, citations and clarifications.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by July 31, 2002.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

REVISIONS:

25000 Children's Community Alternative Disability Program (CCADP)

This program was formerly known as the Disabled Children's Program and is based on 42 CFR §435.225.

25050 Purpose

The Children's Community Alternative Disability Program (CCADP) is a Delaware Medicaid option that is designed to serve children with significant disabilities. Such children would otherwise qualify to be cared for in an institutional setting. The State desires that this program serve as many children as possible at home or in non-institutional settings as long as it can be done safely, efficiently and economically. The best care for children who would be eligible for this program is with the support and direction of involved parents or guardians. This care will generally result from the active collaboration of DSS, and multidisciplinary providers, and parents or guardians.

In general, any child whose disability profile meets a designated level of care may be eligible for Medicaid without regard to parental income, resources, or other health insurance. ~~Given the The State's is committed commitment to promoting children's access to basic health care, any benefit of the doubt concerning program qualification should be resolved in favor of eligibility.~~ To the extent eligibility is jeopardized by safety concerns, DSS will act affirmatively to eliminate or reduce unsafe conditions to an acceptable level through Departmental and community resources. DSS recognizes its responsibility to make a referral to a protective agency if conditions so warrant.

25100 Eligibility

Medicaid eligibility is available to children who meet **ALL of the following seven (7) criteria** established by Federal regulation (42 CFR §435.225):

1. The child must be 18 years of age or younger (under age 19).
2. The child's countable resources do not exceed the SSI limit for a single individual described in DSSM §20300.
3. The child's countable income does not exceed 250% of the SSI benefit level.
- ~~5.~~ 4. The child ~~must~~ meets Supplemental Security Income (SSI) medical disability standards codified at 42 U.S.C. § 1382c(a). ~~(presumptively met if child with chronic condition qualifies for SNF, ICF, ICF/MR, or ICF/IMD level of care).~~
- ~~4.5.~~ The child's profile is consistent with the requires a level of care of a hospital, Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF), Intermediate Care Facility for Mental Retardation (ICF/MR), or Intermediate Care Facility ~~Institution~~ for Mental Disease (ICF/IMD).
6. It is appropriate to provide a comparable level of care

in an alternative setting (e.g. natural family home).

7. The estimated Medicaid cost of care in the alternative setting is no higher than the estimated cost of the comparable facility-based level of care.

25150 Approval Duration And Review Timetable

Approval of an initial application is generally effective for a period not to exceed one year. Subject to DSSM 14950 (6 month guaranteed eligibility) if the Division is aware of the likelihood of a material change in financial or medical status, initial approval may be for a shorter period.

Redetermination of eligibility is expected to occur on at least an annual basis and may otherwise be prompted by notice of a material change in financial or medical status. Redetermination shall include a reassessment of whether the child meets all **seven eligibility criteria** (DSSM 25100). If a child's condition is manifests a chronic profile, the Division may utilize abbreviated reassessment forms and rely on previous evaluations that remain clinically valid.

25200 Caregiver Qualifications

The primary person in charge of the care of a child, usually a family member or a designated health care professional meeting the following qualifications:

1. The individual must ~~be willing to~~ accept the responsibility of the care of the child.
2. The individual must be trained and/or display competence in the medical skill required by the child.

~~25250~~ 25300 General Level Of Care Factors

~~1.~~ The An assessment of whether a child's ~~profile is consistent with~~ requires a qualifying level of care is influenced by multiple considerations. The following objective criteria is used to make the level of care determination. ~~Material~~ These criteria include the following medical, mental, physical, familial, and environmental factors:

1. Professional or specialized personnel (e.g., nurse, therapist) are necessary to provide monitoring, assistance or services; and
2. ~~a.~~ chronological and developmental age of child; or
3. ~~b.~~ nature and severity of disease or medical condition(s); or
4. ~~e.~~ symptomatology or functional limitations attributable to disease or medical condition (s); or
5. ~~d.~~ stability of disease process or medical condition(s); or
6. ~~e.~~ physical environment; or
7. ~~f.~~ availability and profile of primary caregiver(s); or
8. ~~g.~~ potential for harm, regression, or developmental delay in absence of services; or
9. ~~h.~~ extent of assistance necessary for child to

engage in activities of daily living (“ADLs”); or

10. ~~the extent of monitoring or supervision necessary to minimize potential for harm due to mental or physical health risks (e.g. suicide; elopement; self injurious behaviors; seizure); and~~

~~j. extent to which professional or specialized personnel (e.g. nurse; therapist) are necessary to provide monitoring, assistance, or services.~~

2. Since some debilitating diseases and medical conditions (quadriplegia; profound mental retardation) are highly correlated with a qualifying level of care, the Division may adopt presumptive eligibility guidelines to expedite processing of such applications.

~~25300~~ 25400 Specific Level Of Care Standards

~~25300.1~~ 25400.1 Definition Of Institutional Setting

An institutional setting is a residential placement that provides room board and health related services, which are supervised by a licensed practitioner. The setting has the necessary professional personnel, equipment and facilities to meet the health and functional needs of the child on a continuing or repetitive basis and is authorized under State law to provide such care.

~~25300.2~~ 25400.2 Definition Of Hospital Level Of Care

A hospital is an institutional setting that provides medical, nursing and allied health care for acute or chronic illnesses. Such a setting includes at least daily physician intervention and the availability of around the clock professional nursing care. A hospital may provide general medical care or specialized care (e.g. psychiatric or rehabilitative).

~~25300.3~~ 25400.3 Definition Of Skilled Nursing Facility Level Of Care

Skilled nursing facility (SNF) is an institutional setting, which provides skilled nursing or rehabilitation, services for mental or physical conditions. Such a setting includes availability of around the clock professional nursing observation, assessment or intervention.

~~25300.4~~ 25400.4 Definition Of Intermediate Nursing Facility Level Of Care

Intermediate care nursing facility (ICF) is an institutional setting in which nursing and allied health care and support services are provided. Such services are supervised by, but not necessarily given by, a licensed nurse.

~~25300.5~~ 25400.5 Definition Of Icf/4md Level Of Care

An intermediate care facility for mental disease (ICF/4MD) is a residential setting which offers comprehensive clinical and support services to persons with significant behavioral health disorders. Children who qualify for an ICF/4MD level of care exhibit a severe, complex, or chronic behavioral health disorder. Such disorder must compromise age-appropriate functioning in multiple areas and require frequent or intensive medical or behavioral interventions (e.g. drug therapy; professional

counseling; behavior management techniques). Subject to full consideration of factors itemized in Section DSSM 25250), the presence of the following disability-related personal characteristics supports qualifications under an ICF/4MD level of care:

- a. impaired judgment or insight
- b. disorientation to time, place, or person
- c. memory impairment
- d. perceptual or thinking disturbance
- e. lack of self-regulation or impulse control
- f. diminished capacity to focus, concentrate, or maintain attention
- g. propensity to engage in verbal or physical
- f. aggression towards others
- h. marked changes in mood or affect
- i. marked withdrawal, isolation, or depression
- k. sleep disturbance
- l. appetite disturbance with change in weight
- m. marked difficulty in maintaining interpersonal relationships propensity to elope

~~25300.6~~ 25400.6 Definition Of Icf/mr Level Of Care

An intermediate care facility for the mentally retarded (ICF/MR) is a residential setting which offers comprehensive habilitative and support services to persons with mental retardation or related conditions. Children who qualify for an ICF/MR level of care exhibit significant deficits in age-appropriate functioning in multiple domains. As a consequence, they require frequent assistance or supervision to competently or safely engage in activities of daily living (ADLs). Subject to full consideration of factors itemized in Section DSSM 25200, the presence of adaptive behavior deficits in the following contexts supports qualification under an ICF/MR level of care:

- a. self care skills
- b. domestic skills
- c. community skills
- d. self direction
- e. social interaction
- f. safety awareness
- g. receptive and expressive communication
- h. basic learning
- i. co-occurrence of physical or behavioral health disorder
- j. co-occurrence of alcohol or substance addiction or misuse

~~25400~~ 25500 Appropriateness Of Community-based Setting

Program eligibility is contingent upon a finding that non-institutional care is appropriate and services are available (DSSM 25100). The community-based setting must meet the child’s needs safely and effectively to be appropriate. To fulfill this requirement, the Division will assess both the physical and social environment within the

community-based setting. Given the State's strong preference for non-institutional care of children, denial of eligibility based on environmental deficits is disfavored. If eligibility is jeopardized by environmental deficits, the division will affirmatively attempt to eliminate or reduce such deficits to an acceptable level through Departmental and community resources.

~~25500~~ 25600 Determining Medical Plan Of Care And Costs

During the application and redetermination process, medical and social information is gathered from several sources including the primary caregivers, primary care practitioners, specialists and other health care providers, the schools, Child Development Watch (Part C) and/or other relevant sources. A listing of the services needed or currently being provided is recorded indicating whether there are ongoing costs (such as daily home health aides or one-time costs (durable medical equipment). The cost for each are estimated as closely as possible and, to the extent possible, costs paid or defrayed by other insurance or other means of payment insurance settlement, donations, etc.) are deducted from the cost cap. Since Medicaid is generally payor of last resort [with exception of Individual with Disabilities Education Act (IDEA) services], the assessor may contact other potential payment sources to determine potential coverage especially when it appears the child might exceed the cost cap. Once the medical costs are computed the entire packet of assessment information is reviewed by the medial review team for the cost comparison and final eligibility determination.

~~25600~~ 25700 Cost Effectiveness Calculation

A determination of cost effectiveness for the Children's Community Alternative Disability's Program must be made using the following procedures.

~~25625~~ 25725 Calculation

A calculation is made of the total actual or projected cost of all significant, recurring medical services (home health aides & nurses, private duty nursing, Prescribed Pediatric Extended Care, supplies, equipment and therapies).

~~25650~~ 25750 Annualized Costs Calculation

The annualized costs of any significant recurring DME (e.g. specialized wheelchair or lift not included in facility per diem rate) is added to the calculation in DSSM ~~25625~~ 25725.

~~25675~~ 25775 Other Costs

All other costs, such as physician services, pharmaceuticals, lab tests, x-rays, etc. are not part of medical facility costs, so will not be considered in the cost effectiveness determination except in cases where acute hospitalization is the appropriate comparable level of care.

~~25700~~ 25800 Cost Does Not Exceed Comparable Medical Facility Care

The calculated cost in DSSM ~~25600~~ 25725 must not exceed 100% of comparable medical facility care. Comparable rates to be used are defined in the following subsections.

A. If the child is determined to meet the hospital LOC, the anticipated home services costs will be compared to the current fiscal year inpatient hospital rate of the AI DuPont Hospital for Children or alternate facility rate as determined by the Medicaid Director.

B. If a child is determined to meet the skilled LOC, the anticipated home services costs will be compared to the current averaged rate of participating Delaware nursing facilities that are caring for children under 18. A higher comparative rate based on the current averaged rate for children placed in subacute pediatric facilities may be applied for children determined "superskilled" by the DSS Medical Operation Administrator.

C. If a child is determined to meet ICF/MR/DD LOC, the anticipated home service costs will be compared to the current Stockley Center ICF/MR/DD rate or alternate facility rate as determined by the Medicaid Director.

D. If a child is determined to meet the ICF/MD LOC, the anticipated home costs would be compared to the current Terry Center rate or alternate facility rate as determined by the Medicaid Director.

E. If a child is determined to meet an ICF LOC the anticipated home services costs will be compared to the current averaged rate of participating Delaware nursing facilities that are caring for children under 18 years of age.

~~25800~~ 25900 Cost Effectiveness Exceeds Cost Of Institutional Care

When the cost effectiveness analysis shows that the cost of care in the home will exceed the cost of comparable institutional care, the parent or guardian will be offered a choice of the following options.

A. The use of less costly alternatives (such as privately contracting with LPNs or RNs for private duty nursing at a lower cost than can be obtained through an agency, purchasing refurbished, used equipment, etc.), or

B. The use of fewer units of service with assurances from parent/guardian that the remainder of medically necessary services will be provided by or paid for by other means, or

C. The admission to an appropriate medical facility, or

D. The withdrawal of the application for this program.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF FISH & WILDLIFE**

Statutory Authority: 7 Delaware Code,
Section 906(e)(2)(a), (7 Del.C. 906(e)(2)(a))

SAN# 2002-09

1. Title Of The Regulations:

Tidal Finfish Regulations

2. Brief Synopsis Of The Subject, Substance And Issues:

In order to remain in compliance with the Atlantic States Marine Fisheries Commission's Fishery Management Plan for Black Sea Bass, Tidal Finfish Regulation No. 23 needs to be amended to increase the commercial size limit from the current 10 inches to 11 inches. Tidal Finfish Regulation No. 24 needs to be amended for the size requirements for escape vents in black sea bass pots to be increased from a rectangle of 1.125 inches x 5.75 inches to 1.375 inches x 5.75 inches, a circular vent from 2 inches to 2.375 inches, a square vent from 1.5 inches to 2.0 inches and wooden lathes spacing from 1.125 inches to 1.375 inches.

3. Possible Terms Of The Agency Action:

If Delaware does not comply with the Fishery Management Plan, the commercial fishery for black sea bass could be closed by the U.S. Dept. of Commerce.

4. Statutory Basis Or Legal Authority To Act:

§ 906(e)(2)(a), 7 Del. C.

Tidal Finfish Regulation Nos. 23 and 24.

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice Of Public Comment:

Individuals may present their opinions and evidence/or request additional information by writing, calling, or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 (302-739-3441). A public hearing will be held in the DNREC auditorium 89 Kings Highway, Dover, DE 19901 at 7:30 on Tuesday, July 23, 2002. The record shall remain open for written comments until 4:30 PM on July 31, 2002.

7. Prepared By:

Richard Cole, (302)739-4782, May 31, 2002

Tidal Finfish Regulation No. 23, Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas

a) It shall be unlawful for any person to have in possession any black sea bass **Centropritis striata** that measures less than ~~ten (10)~~ eleven (11) inches, total length.

b) It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than eleven and one-half (11.5) inches, total length.

c) It shall be unlawful for any person to possess on board a vessel at any time or to land after one trip more than the quantity of black sea bass determined by the Atlantic States Marine Fisheries Commission for any quarter. The Department shall notify each individual licensed to land black sea bass for commercial purposes of the quarterly trip limits established by the Atlantic States Marine Fisheries Commission.

"One trip" shall mean the time between a vessel leaving its home port and the next time said vessel returns to any port in Delaware."

d) It shall be unlawful for any person to fish for black sea bass for commercial purposes or to land any black sea bass for commercial purposes during any quarter after the date in said quarter that the Atlantic States Marine Fisheries Commission determines that quarter's quota is filled. The Department shall notify each individual licensed in Delaware to land black sea bass for commercial purposes of any closure when a quarterly quota is filled.

e) Is omitted intentionally.

f) It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

Tidal Finfish Regulation No. 24, Fish Pot Requirements

a) It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot has an escape vent placed in a lower corner of the parlor portion of said pot which complies with one of the following minimum sizes: ~~4-125~~ 1.375 inches by 5.75 inches; or a circular vent ~~2~~ 2.375 inches in diameter; or a square vent with sides of ~~1-5~~ 2 inches, inside measure. Pots constructed of wooden lathes must have spacing of at least ~~1-125~~ 1.375 inches between one set of lathes.

b) It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot contains a panel (ghost panel) measuring at least 3.0 inches by 6.0 inches affixed to said pot with one of the following degradable materials:

1.) Untreated hemp, jute or cotton string of 3/16 inches diameter or smaller; or

2.) Magnesium alloy timed float release (pop-up devices) or similar magnesium alloy fasteners; or

3.) Ungalvanized or uncoated iron wire of 0.094

inches diameter or smaller.

c) It shall be lawful for any person to take and reduce to possession any foodfish, except tautog, black sea bass or summer flounder, when said foodfish is caught in his/her crab pot provided said foodfish is not otherwise illegal to possess at that time.

d) It shall be lawful for any person to take and reduce to possession any foodfish, except tautog, black sea bass or summer flounder, when said foodfish is caught in his/her blue crab dredge provided said foodfish is not otherwise illegal to possess at that time.

DIVISION OF WATER RESOURCES WATERSHED ASSEMENT SECTION

Statutory Authority: 7 Delaware Code,
Chapter 19, (7 Del.C. Ch. 19)

1. Brief Synopsis of the Subject, Substance and Issues:

The State of Delaware is proposing to reclassify certain areas of Indian River Bay as Approved for the harvesting of shellfish based on water quality data and scientific findings. Appendix 1 of the State of Delaware Shellfish Sanitation Regulations will be amended to exclude those areas of the Indian River Bay prohibited for Shellfish harvesting.

2. Possible Terms of the Agency Action:

N/A

3. Statutory Basis or Legal Authority to Act:

7 Del.C. Chapter 19

4. List of Other Regulations That May be Impacted or Affected by the Proposal:

N/A

5. Notice Of Public Comment:

The Department of Natural Resources and Environmental Control, Division of Water Resources, Watershed Assessment Section, Shellfish and Recreational Water Branch will conduct a public hearing on July 22, 2002, beginning at 6:00 p.m. in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to hear testimony and receive comments on a proposed amendment to the State of Delaware Shellfish Sanitation Regulations.

The proposed amendment to Appendix 1 of the Delaware Shellfish Sanitation Regulations will reclassify a portion of Indian River Bay from Prohibited to Approved for the harvesting of shellfish. The area, consisting of 931 acres, shall be contiguous with shellfish waters currently classified as Approved, and shall proceed in a westerly direction from

the existing Approved/Prohibited boundary line running from Grays Point to Bay Farm to the shore on and around Rock Point, and excluding the following Prohibited waters: Indian River-proper and its tributaries and an area adjacent to Indian River-proper bounded by a line 650 feet in length in a north-south direction beginning at the Eastern Bank of the mouth of Emily Gut thence running from the southern terminus of said line in a westerly direction to Highgrass Point. Vines Creek and Pepper Creek-proper and their tributaries beginning at a point south of Rock Point and running in an easterly direction to Grays Point.

For additional information or to request a copy of the proposed revisions to the regulations please contact the Watershed Assessment Section at (302) 739-4590.

The procedures for public hearings are established in 7 Del.C. § 6006 and 29 Del.C. §10117. Inquiries regarding the public hearing should be directed to R. Robert Thompson at (302) 739-4403. Statements and testimony may be presented orally or in written form at the hearing. It is requested that those interested in presenting statements register in advance by mail. The deadline for inclusion of written comments in the hearing record will be announced at the time of the hearing. Written statements may be presented prior to the hearing and should be addressed to: R. Robert Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

APPENDIX 1

This list of *Prohibited* shellfish growing areas is recorded at the Delaware Department of Natural Resources and environmental Control into the public record on December 20, 1995. Shellfish harvesting is prohibited in the following areas for any reason at any time:

Delaware River/Bay:

1. The Delaware River north of a line drawn in an east-west direction from the tower at Bombay Hook Point to a tower on the New Jersey side of the River.

2. Duck Creek, Leipsic River and Simons River and all their tributaries and a contiguous area in the Delaware Bay adjacent to the mouths of these Rivers. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the **Delaware Fishing Guide**, and/or other maps available to the public.

3. Little Creek and its tributaries and a contiguous area in the Delaware Bay adjacent to the mouth. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the **Delaware Fishing Guide**, and/or other maps available to the public.

4. St. Jones River and Murderkill River, including their tributaries and a contiguous area in the Delaware Bay adjacent to the mouths of these Rivers. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the **Delaware Fishing Guide**,

and/or other maps available to the public.

5. Mispillion River, Cedar Creek and Slaughter Creek, including their tributaries and a contiguous area in the Delaware Bay adjacent to the mouths of these Rivers. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the **Delaware Fishing Guide**, and/or other maps available to the public.

6. Broadkill River including its tributaries. This area is marked by signs.

7. An area of Breakwater Harbor and Delaware Bay encompassed within a line running from the northern boundary of Beachplumb Island state-owned lands, in a northeasterly direction for 5000 feet, thence in a southeasterly direction to the west end of the inshore breakwater off of Lewes Beach and running on the inside of this breakwater to a point intersecting a line drawn from the Cape Henlopen Fishing Pier to the breakwater then running along said line to the fishing pier and down the center line of the fishing pier to the beach. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the **Delaware Fishing Guide**, and/or other maps available to the public.

Rehoboth Bay and Indian River Bay:

8. Lewes-Rehoboth Canal. This area is marked by signs.

9. Rehoboth Bay north of a line drawn in a northeasterly direction between the tip of White Oak Point to the tip of Bald Eagle Point, thence in a southeasterly direction to a point identified as being directly west of the south submarine observation tower at Delaware Seashore State park and south of the Lewes & Rehoboth Canal mouth, thence in a northeasterly direction to the tip of Thompson Island, thence in an easterly direction to the southern most point of the Rehoboth Bay Marina. This area is marked by signs and buoys.

10. Indian River Inlet & Cedar Islands. The western boundary line begins at Burtons Island, running south to a point west of the marsh, which lies south of an unnamed gut south of the South Inlet Marina, thence in an easterly direction to said marsh. The eastern boundary begins one-half mile south of the Inlet running east into the Atlantic Ocean for one-half mile, thence in a northerly direction for one mile, thence in a westerly direction for one-half mile to the beach. The northern boundary (in the vicinity of Cedar Islands in Rehoboth Bay) begins at an unnamed island north of Savages Ditch running in a southeasterly direction to Burton Island. This area is marked by signs and buoys.

11. White Creek and its tributaries extending south of a line drawn in an east-west direction from the East Shore of White Creek to a point on Big Marsh on the West Shore. This area is marked by signs.

12. ~~Indian River Bay, Indian River and its tributaries, and Pepper & Vines Creek and their tributaries~~

~~west of a line drawn in a north-south direction from Grays Point to a point on the Townsend Property east of Emily Gut. This area is marked by signs and buoys. Indian River-proper and its tributaries and an area adjacent to Indian River-proper bounded by a line 650 feet in length in a north-south direction beginning at the eastern bank of the mouth of Emily Gut thence running from the southern terminus of said line in a westerly direction to Highgrass Point. Vines Creek and Pepper Creek-proper and their tributaries beginning at a point south of Rock Point and running in an easterly direction to Grays Point.~~

13. Herring Creek and its tributaries extending northwest from a line running from Burton Point in a southerly direction to Long Neck. This area is marked by signs.

14. The southwest corner of Beach Cove. This area is marked by signs.

15. The southeast corner of Beach Cove. This area is marked by signs.

16. The northeast corner of Beach Cove. This area is marked by signs.

Little Assawoman Bay:

17. Assawoman Canal. The Canal-proper is not marked. However, the adjacent waters in White Creek in Indian River Bay and Little Assawoman Bay are marked with signs.

18. Miller Creek and its tributaries and the northern reaches of Little Assawoman Bay north of a line running in an east-west direction from Goose Point on the southern bank of Miller Creek at its mouth to an unnamed point on Fenwick Island State Park. This area is marked by signs.

19. Direckson Creek west of a line running from Bennett Point in a southwesterly direction to Conch Point. This area is marked by signs.

20. Tubbs Cove south of a line running in an east-west direction from the shoreline north of Treasure Beach Campground to Point Of Ridge. This area is marked by signs.

21. The waters adjacent to the Town of Fenwick Island south of a line running from Old Inlet Point in a north-north-easterly direction to an unnamed point on the barrier. This area is marked by signs.

Assawoman Bay:

22. That portion of an unnamed bay north of the Delaware/Maryland line adjacent to the Cape Windsor Development. This area is marked by signs.

23. Roy Creek and its tributaries northwest of a line running from an unnamed point on Grey's Neck northeast across several unnamed islands to a point south of Route 54. This area is marked by signs.

Nanticoke River:

24. Nanticoke River and all its tributaries. This area is marked by signs.

Atlantic Ocean:

25. The Atlantic Ocean adjacent to Indian River Inlet encompassed within a line beginning one-half mile south of the Inlet running east into the Atlantic Ocean for one-half mile, thence in a northerly direction for one mile, thence in a westerly direction for one-half mile to the beach. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the **Delaware Fishing Guide**, and/or other maps available to the public.

26. The Atlantic Ocean within a radius of one-half mile from the South Coastal Sewage Treatment Plant outfall which is located at north latitude 38°31'34" west longitude 75°01'56".

Applies To All Areas:

27. All artificial lagoons. Most of these areas are unmarked.

28. All wet slip basins. Most of these areas are unmarked.

NOTE: Please consult Delaware Fish and Game Laws for size and creel limits prior to harvesting shellfish. For further information regarding classification of Delaware's shellfish growing areas, please call (302) 739-4590.

DEPARTMENT OF TRANSPORTATION

DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code, Section 190 et seq., plus federal authority (17 Del.C. §190 et seq., plus federal authority)

Statewide Long Range Transportation Plan

Background

The Delaware Department of Transportation, through its Division of Planning, is updating its Statewide Long Range Transportation Plan (Plan). *Transportation and Delaware's Future*, the current Plan, was adopted in January 1997 to meet the requirements of the federal Intermodal Surface Transportation Efficiency Act (ISTEA) of 1990, and as the Department's response to *Shaping Delaware's Future*, the statewide vision for growth and development.

Although the existing Plan is sound, there are several reasons why it needs to be updated. First, ISTEA required that the Plan be updated every five years to reflect changes in the State and in how the transportation system is being used, and the 1998 Transportation Efficiency Act for the 21st Century reaffirmed this requirement. Second, the Department needs to keep pace with changing county and

municipal comprehensive plans, as well as with the long range transportation plans maintained by Wilmington Area Planning Council and the Dover/Kent County Metropolitan Planning Organization, the two metropolitan planning organizations in the State. Third and perhaps most important, the Plan needs to recognize the progress the Department has made over the past five years and what adjustments are needed to continue to support the *State Strategies for Policies and Spending*, which are part of the *Livable Delaware* initiative being implemented by Governor Minner.

As part of the update process, particular attention is being given to the State Infrastructure Map that is part of the *State Strategies for Policies and Spending*, and to the underlying policies of the Plan, which need to reflect *Livable Delaware*. As such, the primary focus of the update is on how the goals, strategies, policies, and actions adopted under the current Plan need to change to support the *State Strategies for Policies and Spending* and *Livable Delaware*. To this point, the update process has involved looking at what was implemented under the existing Plan, what policies and programs have been implemented or changed at the federal, state, and county and local government levels, and how the use of the transportation system has changed. The analysis in these three areas was used to develop draft principles, policies and actions, and this information was presented to the public at three workshops that were held during the public comment period that ran from March 1, 2002 through April 5, 2002. Based on the background information collected and analyzed, and the comments received from the public, the draft Plan was written and is now being made available for public review and comment.

Interested persons are invited to comment on the draft Plan. The public comment period will run from July 1, 2002 through July 31, 2002, and copies of the draft Plan will be available for review through at the following locations:

- The reference desks of all public libraries located through the State; and,
- The DelDOT website located at www.deldot.net.

In addition, copies of the Draft Plan can be obtained by visiting the Delaware Department of Transportation, Division of Planning offices, which are located at the DelDOT Administration Building, Route 113, Dover, or by contacting the DelDOT project manager, Joseph Cantalupo, as noted below.

Any requests for a listing of public library locations or for copies of the draft Plan, or any questions or comments regarding the draft plan should be directed to:

Joseph Cantalupo, Assistant Director of Planning
Delaware Department of Transportation
PO Box 778

Dover, DE 19903
(302) 760-2121 (telephone)
(302) 739-2251 (fax)
PlanUpdate@mail.dot.state.de.us.

LONG-RANGE TRANSPORTATION PLAN UPDATE
Volume II
June 2001
Prepared for
Delaware Department of Transportation
Prepared by
Parsons Brinckerhoff Quade and Douglas, Inc.

Abstract

This document serves as an update to Delaware's first Statewide Long-Range Transportation Plan which was adopted in January 1997. Consistent with state and federal policy, this update has been undertaken to document and address the policy and program implications of changes that have occurred since 1997. Demographic trends and projections have altered slightly; other transportation planning bodies such as Metropolitan Planning Organizations, counties, and municipalities have created or updated their plans; a new Administration has set out fresh policy directives; and Delaware's State agencies have ironed out a state infrastructure map to guide State investments geographically. These events prompt an update to our Long-Range Transportation Plan.

The content and focus of this Plan is very similar to the earlier version, incorporating key planning principles and policies, along with associated strategies and actions to be pursued by the Delaware Department of Transportation (DelDOT) over the life of this Plan. The update includes some minor revisions or modifications as a result of shifting trends in Delaware's demographics and changes in broader State policies. Further changes have also been made to format and content in order to enhance the quality of the document, so that it may clearly and concisely document the long-range targets and objectives of the Department.

Introduction

Transportation systems and policies play an important role in shaping the future of Delaware. Recognizing the importance of providing a high quality transportation system now and into the future, the Delaware Department of Transportation is guided by the following mission:

To provide a safe, efficient, and environmentally-sensitive transportation network that offers convenient, cost-effective mobility opportunities for people and the movement of goods.

This Long-Range Transportation Plan update (the Plan) is important since it serves as a strategic planning tool for us

– a blueprint of how we intend to chart our long-term course. The long-range planning effort enables the Department to define programs and prioritize actions and is a way to more proactively meet the State's transportation needs.

A long-range planning process sets realistic but forward-thinking goals and develops an approach and strategies to achieve those goals. The Plan therefore summarizes the organizations' broader concerns and prioritizes actions that will ultimately shape and guide the Department in the future.

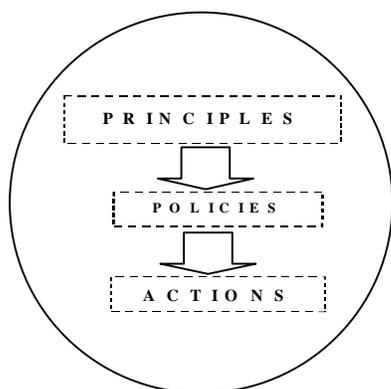
The Plan also serves as a framework to guide and support management decisions within a broader long-term context. It is a document that we can continually refer to, to communicate its purpose and intentions to external agencies and decision-makers and to reaffirm its commitment to providing for the transportation needs of the State.

The long-range planning process is a necessity for any transportation system. This long-range plan:

- Sets a clearly defined direction that guides and supports the governance and management of the organization.
- Serves as a way to develop and present a common vision and purpose that is shared among all our customers and stakeholders.
- Establishes an increased level of commitment for the organization to its policies and helps to motivate and direct the achievement of its goals.
- Provides a method for improving services to travelers as well as a means of measuring the quality of the service that is provided.
- Enables the Department to set priorities and to match its planned resources to particular project opportunities.

The Plan tries to closely mirror the broader objectives and concerns of State policies such as "*Livable Delaware*" and the "*Statewide Strategies for Policies and Spending*" by refocusing the Plan's key principles to ensure the effective promotion of these state-directed policies.

The Plan consists of several sub-sections. The first section summarizes key issues and concerns that impact transportation in the State of Delaware to help determine the type of needs that should be addressed. This section also describes some basic trends and statistics, shows the major changes that have occurred over the past few years, and describes forecasted trends that can be expected if current conditions continue.



The second section presents a three-tiered framework that identifies activities that constitute the Plan. These activities are deemed necessary to realize the State's vision for transportation in the State. The three-tiers include **Principles, Policies and Actions**. As shown in the diagram, each one logically flows out of the other. A Principle is a broader transportation-related topic or theme, on which we have chosen to focus its long-term efforts.

The Plan is built from six core Principles:

1. Development: *"Direct our programs, services and facilities to support Livable Delaware"*
2. Travel Opportunities & Choices: *"Maximize travel opportunity and choice for all Delawareans"*
3. Cost Effectiveness: *"Use cost-effectiveness as one of our fundamental principles"*
4. Quality of Life: *"Continue to emphasize quality of life as our foundation"*
5. Economic Development and Growth: *"Provide transportation opportunities that support economic development and growth"*
6. Planning & Coordination: *"Maintain planning and coordination as an integral part of our activities"*

A number of key Policies have also been developed which directly relate to the above Principles. These Policies are statements that concisely summarize our position in that particular area of concern. In addition, various Actions relevant and necessary to realizing the policy have also been devised. The following is presented by way of an example:

Principle

"Direct our programs, services and facilities to support Livable Delaware"

Policy #1 (of 2)

"Coordinate land use and transportation in a manner that promotes long-term transportation efficiency"

An Action to realize the Policy would be

"Explore new ways to better coordinate land use and transportation planning in the future such as strengthening collaboration between land use planning functions and transportation decision-making"

Funding plays a key role in the realization of the Plan. Section Four of the Plan looks at current funding sources and relevant processes as well as future financing challenges that will need to be addressed.

To ensure the vitality and usefulness of this Plan, implementation and monitoring is a vital component of this effort. To that end, Section Five of this plan defines guidelines required for implementation and outlines a method for monitoring and evaluating the attainment of goals set forth in the Plan.

Background

This section outlines the existing conditions or contextual environment in which this Plan update is taking place. It summarizes some of the key statistics to give a sense of the status of the transportation system in Delaware. The section also highlights some of the most prominent trends that impact transportation and identifies key transportation issues that will face Delaware in the future as a result.

Contextual Environment

Demographics¹

Population

In the 10-year period from 1990 to 2000, the population of Delaware increased by more than 17% to 783,600 residents and is expected to increase an additional 24% to 970,403 by 2025. Population density is most concentrated in the northern portion of the State or Northern New Castle County, near Wilmington. Currently, New Castle County accounts for only 22% of the State's area; however, it comprises nearly 64% of Delaware's population. Kent County is less densely populated, with 16% of the State's population and 30% of its land, while Sussex County with 49% of the State's area is the least densely populated making up 20% of Delaware's population.

In recent decades, population growth has been steadily positive in all three counties. Between 1960 and 1990, Delaware's population grew by about 49% according to U.S. Census data. Kent County, the State's least populous county, showed the strongest rate of growth during those thirty years, growing by 69% or 45,300 people. Meanwhile, the State's most populous county, New Castle, grew at the slowest rate (44%) but by the greatest number of people, 134,500². Between 1960 and 1990, the State's population grew at an annual rate of about 1.3%, whereas projections

1. Source: Delaware Population Consortium. *Annual Projections, 10/18/2001. Version 2001*

2. Source "Shaping Delaware's Future: Managing Growth in the 21st Century Delaware - Strategies for State Policies and Spending" December, 1999

indicate that during the next 25 years, Delaware's population will grow at about 0.77% annually.

Employment

Delaware's employment concentrates very strongly in New Castle County, accounting for 65% of the State's 421,000 jobs. Areas of job concentration in New Castle County include Newark (15,000 jobs) and the area within ½-mile of I-95 between Wilmington and the Maryland border (about 40,000 jobs). The most significant concentration of employment is in downtown Wilmington, which is home to about 45,000 of those jobs. Employment in downtown Wilmington is expected to grow to over 60,000 jobs by 2008.¹

Households

By 2025 Delaware will experience an overall increase in total households by 30%, however household size will continue to decline by about a half percent annually. The household size is projected to be about 2.16 by 2025 (currently 2.54), suggesting a growing number of single parent families, elderly persons, single adults and households with no children. Smaller household sizes generally indicate a greater number of vehicle trips per person, mainly because larger households can typically economize by making trips that serve a larger number of residents. While the pattern might not hold true for particular households or demographic groups, it does accurately characterize travel patterns in the aggregate. Smaller household sizes are likely to affect transportation by augmenting the effects of population increases, effectively increasing the growth rate of trips and vehicle miles traveled (VMT).

Licensed Drivers and Registered Vehicles²

There were 563,949 licensed drivers and 717,000 motor vehicles in Delaware in 2000 -- about 1.27 vehicles per driver. The number of licensed drivers and motor vehicles continues to increase faster than overall population. According to the 2000 Annual Traffic Statistical report published by the Delaware State Police, licensed drivers increased by 2.2% from 1999 to 2000 while population increased by just 1%. Meanwhile, motor vehicle registrations have been increasing at an average annual rate of 2.5%, based on statistics from the latter half of the 1990s. In short, the growth in automobiles is outpacing the growth in registered drivers, which continues to outpace the growth in population. The State is becoming increasingly

automobile-dependent.

Physical Facilities³

Roads

We are responsible for managing and maintaining 12,424 lane miles of roadway or roughly 90% of roads in Delaware. Our jurisdiction includes I-95, residential streets, and even dirt roads in rural areas. Twenty-five percent of Delaware's roads qualify for federal funds for rehabilitation and reconstruction projects. When the lane miles increase, maintenance and repair budgets also increase, and this translates into an increased financial responsibility for us.

Bridges

We are responsible for maintaining 1,363 of Delaware's 1,437 bridges. Municipalities, private owners, the Delaware River & Bay Authority, railroads, and the US Army Corps of Engineers are responsible for maintaining the other 74 bridges. Age and increasing traffic volumes are contributing to the deterioration of many of the large bridges built in the interstate era, and many of the small, narrow bridges are now obsolete. Maintenance and reconstruction of Delaware's bridges will require increased funding, since approximately one-third of all of the bridges were built before 1950.

Rail⁴

The existing railroad corridors and rights-of-way in Delaware include Wilmington & Northern Industrial Track freight lines; the West Yard owned by Norfolk Southern; the New Castle Secondary and Delmarva Secondary owned and operated by Norfolk Southern; the Northeast Corridor passenger rail line owned and operated by the National Railroad Passenger Corporation (Amtrak); the state-owned New Castle Industrial right-of-way, which is not in operation; and the state-owned Wilmington & Northern right-of-way, which also is not used.

Delaware has five freight railroads and 218 freight rail-miles.⁵

Park & Ride/Park & Pool

The Delaware Transit Corporation (DTC) provides 54 Park & Ride (which are served by Transit) and Park & Pool lots throughout the state, with bike lockers provided at various Park & Rides throughout New Castle County.

1. Source: SG Associates, Inc. *Wilmington Transportation Studies: Transit Shuttle Feasibility Analysis*. City of Wilmington, DelDOT and WILMAPCO. May, 1998
2. Source: DelDOT. *Delaware Transportation Facts 2001*.

3. Source: *Ibid.*
4. Source: DMJM+HARRIS. *Delaware Passenger Rail Engineering Study*. DelDOT and DART. January 2002.
5. Source: Association of American Railroads. *Railroad Service in Delaware*. 2000.

Aviation

Delaware has 11 public-use aviation facilities. During the past few years, New Castle Airport has accounted for almost half of the non-military flight movement in the state, and approximately 63% of this flight has been for private business-related purposes. The Philadelphia International Airport and the Baltimore-Washington International Airport still serve most commercial passengers.

Private airports are the majority of the aviation facilities in the State. The publicly-owned facilities include the New Castle Airport, Sussex County Airport, Delaware Airpark, and the Dover Air Force Base Civil Air Terminal.

Currently, approximately 255,821 flights originate or land in Delaware's airports; in 2015, this number is expected to increase to 366,600.

Ports

The Port of Wilmington is operated by the Diamond State Port Corporation, but it is owned by the State of Delaware. In 2000, over 13 million tons of goods were shipped through the port.

The Port has established many niche markets, such as fresh fruits and juice concentrates. Other commodities include minerals, metallic ores, and automobiles. An auto berth project, designed to expand and improve facilities for automobile transport, is scheduled for completion in the late summer of 2002.

Shipments come from various countries around the globe. Shipments are sent to places like Central America, the Middle East, Europe, Australia, Brazil, and South Africa.

Operations

Vehicle Miles Traveled¹

Vehicle Miles Traveled (VMT) are the total miles traveled by all vehicles for a section of roadway in a given amount of time. Within the last 20 years, the annual number of VMT on all Delaware State roadways increased 109% from 4.093 billion in 1979 to 8.201 billion in 2000.

Vehicle Hours Traveled²

By 2025, the vehicle hours traveled (VHT) in the state of Delaware is expected to increase 50.1%, from 582,977 in 2000 to 874,762. Sussex County is expecting the greatest increase, from 104,000 to 201,000, an increase of 93.3%. New Castle and Kent Counties are both expected to increase by approximately 40%.

Transit³

Modes

DART First State is operated by the DTC and offers a range of intermodal services including passenger rail, local bus, express bus, intercounty bus, paratransit, and subsidized taxi, throughout the state. DTC is an operating division of DelDOT.

Bus Service

DTC operates 62 fixed bus routes: 40 in northern New Castle County, 12 in Kent County, and three-year round routes in Sussex, with an additional seven routes Memorial Day to Labor Day. DTC also provides express bus service serving areas in New Castle County.

DART First State Bus Ridership has increased 5% from 1999 to 2001, with a current annual ridership of 7,992,628 trips. DART provides local bus services statewide, as well as intercounty and fixed route bus services.

Passenger Rail Service

The Southeastern Pennsylvania Transportation Authority (SEPTA) provides commuter rail service to Delaware through its R2 Regional Rail Route. Amtrak also provides intercity service along the Northeast Corridor; of the 115 trains that stop at the Wilmington train station every weekday, 80 are Amtrak trains.

DART First State's SEPTA R2 train ridership has increased by 54%, or 255,097 passengers since 1997. This increase can be attributed to the opening of the Newark Train Station in 1997 and the Fairplay Station at Churchmans Crossing in 2000.

Paratransit Service

DART First State provides door-to-door service throughout the State for passengers who are unable to use fixed-route bus service, due to age or disability. In order to utilize the service, passengers must be certified as defined in the Americans with Disabilities Act. This service is also available for those who are in need of transportation to dialysis treatments at renal care centers. Paratransit ridership providing statewide door-to-door bus service has increased 26% from 428,578 trips in 1999 to 541,110 trips in 2001.

Transportation Trends And Challenges Facing Delaware

Dramatic growth and shifts in where people live and work place tremendous pressure on Delaware's transportation system. There are a number of major trends, which if left unchecked could result in significant adverse

1. Source: DelDOT. Delaware Transportation Facts 2001.

2. DelDOT Travel Model

3. Source: DelDOT. Delaware Transportation Facts 2001.

impacts on the overall transportation system. These trends provide important context for the actions specified in this Plan.

“A Rapidly Growing Delaware”

Probably the most prominent “livability” issue facing Delaware, as a recurring theme in numerous policies and plans, is growth management. Governor Minner’s “Livable Delaware” policy promotes growth management objectives in six of its 11 points, and every county and regional long-range transportation plan emphasizes the coordination of land use and transportation planning as a central principle or objective. Growth is an important issue in Delaware, both because it fuels economic development and because it can threaten the State’s livability if not managed properly.

As in many other states and metropolitan areas throughout the United States, the signs of unmanaged growth are present in Delaware. People are living much farther from where they work and shop; low-density suburban growth is spreading into rural landscapes at a rapid rate consuming open space and agricultural lands; and auto-oriented development is detracting from Delaware’s “sense of place.”

These phenomena have important consequences for transportation. Most of the State’s residential environs strongly favor automobile use, with cul-de-sacs that deter the provision of bus service, inadequate pedestrian and cyclist facilities, and single-use residential developments that provide few direct routes and no connections to neighboring communities – ultimately requiring a car for accessing any destinations from home. Suburban office parks and strip development further inhibit discretionary trips by bike, foot or transit. Further, demographic projections show that Delawareans will live increasingly farther from where they work and shop.

In real terms, Delaware is projected to grow at a modest rate over the next 20 years – just 0.55% annually in population and 0.74% annually in employment.¹ However, residents and State advocates remain acutely sensitive to growth because *unmanaged* development could quickly threaten the State’s environmental amenities and mostly rural character. The combination of shrinking household sizes, which effectively magnify the effects of population growth, and continued auto-oriented suburban expansion are projected to increase auto traffic much more quickly. If current trends continue, vehicle-miles-traveled will increase 1.5% annually – nearly three times as fast as population – and vehicle-hours traveled will increase 1.7% annually!²

1. *Source: population and employment projections provided by the Wilmington Area Planning Council, the Dover/Kent County Metropolitan Planning Organization and Sussex County.*

2. *Source: DelDOT estimates, projected in 2000.*

Because transportation and land use are so closely related, we have an important role to play in helping counties and municipalities accommodate new development in a way that sustains Delaware’s livability. Various policies are available to us that could help manage traffic growth more effectively, provide alternative modes of transportation, and support the type of community character that Delaware’s counties want to promote.

For example, since completion of our original 1997 Long-Range Transportation Plan, State agencies have developed an infrastructure investment map consistent with the former Governor’s policy, “Statewide Strategies for Policies and Spending”, which remains just as relevant under the current Administration. The map shown in Figure 1, displays several types of areas in the state, corresponding to various levels of intended infrastructure investment. They range from “Community,” where infrastructure investments should support all types of development and transportation modes, to “Rural,” which the State will strive to protect from new development, in part by limiting infrastructure investments to providing for only the most basic needs and modes.

“A Graying Population”

A second major issue that will affect demand for transportation into the future is Delaware’s aging population. During the next 25 years the population of persons below age 65 is projected to grow by 3.9%, or 25,000 persons, while the elderly population is expected to grow by 74.7%, or 68,000 persons.³ In fact, during the period between 2005 and 2025, all of Delaware’s net population growth will occur among those aged 65 and above. As Delaware’s baby boomers (i.e., those born between 1946 and 1964) enter their older years, as more people choose Delaware as a place to retire, and as people in general continue to live longer, the growth in elderly population will accelerate rapidly after 2005. Figure 2 depicts this trend. What will the change mean for transportation needs in Delaware?

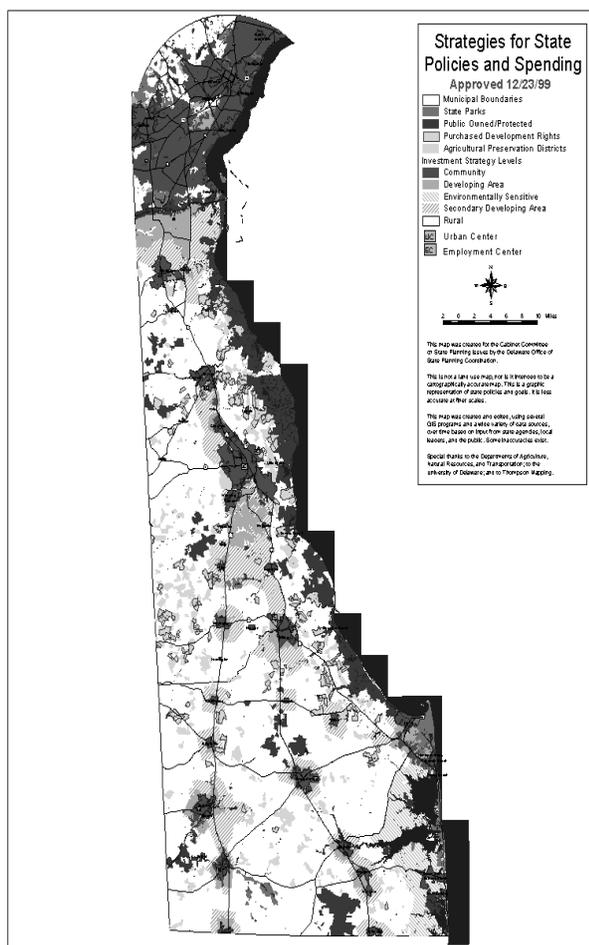
First, older drivers generally require safer roads and clearer signing. Our design activities may need to become more sensitive to these needs over the long term, and the State may need to adopt policies or develop programs that respond particularly to elderly drivers’ needs. This includes ensuring that our outreach efforts are accessible, widespread, and take into consideration the needs of the elderly population. Also, the coordination of land use and transportation once again may provide a solution by allowing people to “live locally” more easily.

Second, the elderly depend on transit services to a considerable extent. In Delaware, elderly persons are eligible for a special type of door-to-door “paratransit”

3. *U.S. Census projections. Population Division, September 5, 2000.*

service, which is the most expensive type of transportation provided by the State. By 2025 the population that is eligible for paratransit services -- based strictly on age -- will amount to one in every five persons in the State. Furthermore, the elderly themselves will be older -- such that the eligible population will proportionally place greater demands on paratransit services. This issue presents us with a financial challenge.

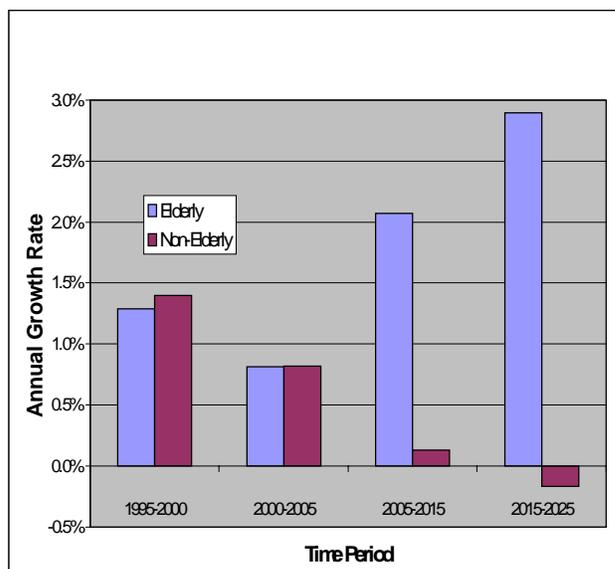
Figure 1: Statewide Strategies for Policies and Spending



Third, and perhaps most importantly, Delaware’s aging population will create fiscal challenges both for the State and the Department. As the proportion of elderly persons increases, Delaware’s working-age (and care-taking age) population will account for a decreasing share of residents. Whereas presently the State has about 4.9 working-age persons per every one elderly, in 2025 the State will have just 2.9. Many middle-aged adults will have both parents alive well into their 70s, 80s or 90s. Because the working-age population pays the great majority of the State’s taxes

and fees, their decreasing proportion threatens to shrink the tax base considerably, in proportional terms. All the while, the demand for publicly-provided services and infrastructure may increase as families depend more on State and local governments to provide for their needs, and as expanding infrastructures demand more in the way of maintenance and repair.

Figure 2: Aging in Delaware – Elderly and Non Elderly Population Growth (1995 To 2025)



We may also be forced to rely more heavily on the Transportation Trust Fund, rather than Federal dollars. After 2005, the Federal government will begin experiencing the same fiscal crunch of a nation-wide aging trend, and its provision of Social Security and Medicare benefits will top the list of domestic concerns, well above transportation. Meanwhile, the Transportation Trust Fund’s narrow dependence on driving and auto ownership could reduce the Department’s ability to pay for the operation and development of the transportation system in a way that meets all the demand. These fiscal and infrastructural challenges will arise gradually over time, beginning in about 2005.

“An Aging Infrastructure”

Finally, a third major issue that will continue to affect us into the future is the State’s aging transportation infrastructure (roads, bridges etc). Today, Delaware’s infrastructure remains relatively young; as the infrastructure ages, however, it will require an increasing amount of care and attention.

Currently, we are successfully meeting preservation

and maintenance challenges – from I-95 pavement reconstruction, to the Department’s bridge program that repairs or removes aging structures. In the future, the competition between spending to expand and spending to maintain and preserve the system, will increase.. If timely improvements or regular maintenance are not undertaken, cost implications for the future would be considerably magnified.

Conclusions

Within this context, the Plan sets guiding principles for the future. Growth management issues, such as transportation/land use coordination, air quality and congestion, already prompt attention today, while issues related to Delaware’s aging population and infrastructure will demand increasingly more attention in years to come. The Department can begin readying itself for future challenges today. This Plan assists us to do just that, by providing guiding principles for policies and actions.

Principles, Policies and Actions

This section of the Plan provides details about what we intend to do to provide transportation systems and services that best meet the needs of our customers. A three-tiered framework consisting of Principles, Policies and Actions has been used to organize the main recommendations and strategies contained in this section of the Plan.

A **Principle** is a broader transportation-related topic or theme on which we have chosen to focus our longer term efforts. The Plan contains a total of six core Principles: “Development,” “Travel Opportunities and Choices,” “Cost Effectiveness,” “Quality of Life,” “Economic Development and Growth,” and “Planning and Coordination.” A number of key Policies have also been developed which directly relate to each of these Principles. **Policies** are statements that concisely summarize our position in a given area of concern. **Actions** are necessary activities that we intend to undertake to achieve the policies, and thereby ultimately realize the Plan.

Where do the Principles, Policies and Actions get us?

As a Department, DelDOT is trying to be more:

- Accessible
- Responsive
- Efficient

And focus on:

- Fixing transportation problems
- Providing for orderly economic growth
- Preserving as much green space as possible

Development

“Direct our programs, services and facilities to support Livable Delaware”

A fundamental relationship links development and transportation; the nature of development sustains certain types of transportation. In turn, the quality and mode of transportation can influence the overall character and level of development that arises in a given location. Because “*Development*” has a symbiotic relationship with transportation, it is the focus of a key principle in the Plan.

In line with other state agencies and “*Livable Delaware*” goals, strategies and policies, the main concern around development is limiting “sprawl,” redirecting growth toward existing population centers, and preserving agricultural lands. Through strategically focusing our investments and actions, transportation can play a key role in efforts to concentrate development and direct growth. Some the key Development policy statements include:

(i) Coordinate land use and transportation in a manner that promotes long-term transportation efficiency.

Update programs, standards, regulations and data in a manner that promotes efficient transportation facilities and services. This is necessary so that we incorporate the necessary procedures and guidelines to ensure the required level of land use/transportation integration. The following updates will be undertaken with this in mind:

- *Access Management Program* -- Continue to guide development through the implementation of an effective access management program, incorporation in relevant State Manuals, and a review of municipal agreements.
- *Common Entrance/Subdivision Street Review* -- Revise Section 15 of our Rules and Regulations for Subdivision Streets to address adjacent land uses and better define standards for access.
- *Transportation Impact Studies* -- Change the focus of impact studies from solely vehicular traffic impacts to all modes. We will revive the Transportation Assessment Procedure’s study to develop alternatives to level of service for measuring impacts and acquire Delaware-specific data for use in transportation impact studies.

Formulate DelDOT Interconnectivity Policy. Differing views frequently exist concerning the necessity of roads connecting various subdivisions. While benefits in traffic circulation can be gained from having multiple travel routes through a community, perception or reality of increased traffic in once more isolated neighborhoods can be strong. With public input, we will create a series of criteria establishing guidelines for interconnectivity between

subdivisions.

Improve awareness and knowledge of land use decisions' impacts on every mode of transportation efficiency. In order to provide the public with broader awareness of the land use/transportation relationship, it is important that we have programs in place to demonstrate and convey the potential impacts of land use on transportation efficiency. This action will promote broader public knowledge of the benefits of "livable and transit friendly" urban environments and strengthen support for projects that maintain this link. Two programs come out of this action:

- *Congestion Standards / Level-of-Service instruction* – We will provide training for county and elected officials about land use and its impact on transportation. In addition, we will seek increased assistance from counties and localities in managing congestion on the local level.
- *Public education campaign on transportation and land use* – We will inform residents and local developers of the impacts of certain land uses on transportation.

Explore new ways to better coordinate land use and transportation planning in the future. Where appropriate, this could include introducing ways to limit or direct development through disincentives such as impact fees. This would also involve exploring the potential for strengthening collaboration between land use planning and transportation decision-making.

(ii) Direct or focus transportation investments in Delaware in a manner that promotes sustainable development within designated areas.

Establish and implement a logical vision for sustainable growth. We place a significant emphasis on sustainable growth for Delaware. The following actions detail how this vision will be achieved:

- *The Statewide Strategies for Policies and Spending* map is an essential element of this Plan. We will work with the Governor's office and the Office of State Planning to periodically review the State Strategies for Policies and Spending map to ensure that its designations are appropriately sized and located for projected growth.
- *With public input, annually re-prioritize the selection and timing of transportation projects in a way that promotes sustainable development.* We will target resources and transportation project investments to achieve envisioned and sustainable patterns of development.
- *Model site design standards for improved environmental design.* We will apply site-level transportation standards that help ensure that

development promotes Delaware's quality of life.

- *Reduce polluted runoff in new development and significant redevelopment projects.* We will continue to investigate measures to improve the quality of stormwater runoff from DeIDOT-owned roads and properties. As part of promoting low-impact development project concepts, we will also identify practices that reduce polluted runoff, decrease impervious surfaces, and/or abate flooding, especially to the extent that flooding impacts water quality.

Site plan review improvements. Another key action will be to encourage municipalities to adopt a consistent approach to review land development plans, including the establishment of a Development Advisory Committee. We will also call for municipalities and Kent and Sussex Counties to adopt an Adequate Facilities Ordinance for transportation improvements.

Land Use Planning Act (LUPA) Improvements. We will continue to participate in this review process with a greater emphasis on a coordinated response with other State agencies. We will also work to revise the Municipal Annexation Policy with an objective of discouraging functional enclaves, except where there is no duplication of public services or utilities.

Streamline regulatory processes to encourage development in desired areas. We will work with the Office of State Planning Coordination and local governments to change the Delaware Code sections related to requirements to study the effects on traffic of each rezoning application. Also, we will modify the agreements that the counties and DeIDOT negotiated.

Corridor Capacity Preservation Program. We will continue to implement an effective corridor capacity preservation program pursuing infrastructure investment that will accommodate existing and future development without degrading the capacity of the corridor.

Table 1. Summary of the Policies and Actions encompassed in the Development Principle

Development - Policies and Actions		Time Period				
		Short Term	Medium-Term	Long Term	Outgoing	
Development "Direct our programs, services and facilities to support Livable Delaware"	Coordinate land use and transportation in a manner that promotes long-term transportation efficiency.					
	<i>Programs, standards, regulations and data will be updated in a manner that promotes efficient transportation facilities and services.</i>					
	<ul style="list-style-type: none"> • Access Management Program Update. 	X				
	<ul style="list-style-type: none"> • Common Entrance/Subdivision Street Review Update. 	X				
	<ul style="list-style-type: none"> • Transportation Impact Studies Update. 	X				
	<i>Formulate DelDOT Interc connectivity Policy.</i>	X				
	<i>Improve awareness and knowledge of land use decisions' impacts on every mode of transportation efficiency.</i>					
	<ul style="list-style-type: none"> • Instruction on Congestion Standards / Level-of-Service. 	X				
	<ul style="list-style-type: none"> • Public education campaign on transportation and land use. 		X			
	<i>Explore new ways to better coordinate land use and transportation planning in the future.</i>					
	<ul style="list-style-type: none"> • Impact fee programs. 		X			
	<ul style="list-style-type: none"> • Collaboration between land use planning functions and transportation decision-making. 				X	
	Direct or focus transportation investments in Delaware in a manner that improves awareness and knowledge of sustainable development within designated areas.					
	<i>Establish and implement a consistent vision for sustainable growth.</i>					
	<ul style="list-style-type: none"> • Periodic review of the Statewide Strategies for Policies and Spending to ensure that designations are in line with projected growth. 	X				
	<ul style="list-style-type: none"> • With public input, re-prioritize the selection and timing of transportation projects in a way that promotes sustainable development. 		X			
	<ul style="list-style-type: none"> • Develop and apply a predetermined set of transportation standards to each site to help ensure that new development promotes Delaware's quality of life. 		X			
	<ul style="list-style-type: none"> • Seek to promote low-impact development projects, thereby reducing polluted runoff in development and redevelopment projects. 		X			
	<i>Site plan review improvements.</i>					
	<ul style="list-style-type: none"> • Consistent review of municipal and county land development plans throughout the state. 			X		
<ul style="list-style-type: none"> • Adoption of Adequate Facilities Ordinance for transportation improvements in municipalities and Kent and Sussex Counties. 		X				
<i>Land Use Planning Act (LUPA) review improvements.</i>						
<ul style="list-style-type: none"> • DelDOT function to continue with greater emphasis on a coordinated response with other State agencies. 				X		
<ul style="list-style-type: none"> • Revision of Municipal Annexation Policy. 	X					
<i>Streamline regulatory processes to encourage development in desired areas.</i>						
<ul style="list-style-type: none"> • Engage in discussion on the Delaware Code sections related to procedures for DelDOT analysis on the effects on traffic of each rezoning application. 		X				
<ul style="list-style-type: none"> • Oblige each county to include traffic congestion requirements in subdivision and land development regulations. 		X				
<i>Corridor Capacity Preservation Program.</i>						
<ul style="list-style-type: none"> • Continued implementation of corridor capacity preservation program. 	X					

Travel Opportunities and Choices

"Maximize travel opportunity and choice for all Delawareans"

Access and mobility issues emphasize the importance of providing alternative means of transportation – whether via private automobile, public transit, bicycling or walking. It is important to promote expanded modal options or travel choices, primarily as a means toward improving personal accessibility and increasing travel opportunities to services, residences, recreational, work and other destinations as well

as facilitating movement of workers, consumers and goods for Delaware businesses. This principle is also intended to address the concern of providing reasonable and cost-effective travel options for those who have limited mobility options i.e., persons who do not own a car or who are not able to drive such as the elderly and youth. As a result, the following policy statements are listed to achieve this principle of maximizing travel opportunities and choices for all Delawareans.

- **Promote an expanded variety of travel opportunities to workplaces, services, residences, and recreational and work destinations, and provide reasonable travel options for those who have limited mobility options.**

Improve and expand facilities and services dedicated to modes other than the single-occupant vehicle. Clearly an important action that will enable the maximization of travel opportunities and choices is to provide feasible ways of increasing the type of transportation modes and destinations available to the citizens of Delaware. This would enable those people who by choice or by circumstance do not have access to a private automobile, to have various mobility options available to them. Some of the ways that this policy would be realized include:

- Carry out the transportation improvements and recommendations contained in the Five-Year and Long Range Transportation Plans for DTC that look at strategic ways to expand public transportation facilities and services, park and ride availability, and other inter-modal connections to provide “seamless” transfers for an efficient well-functioning transit system.
- DelDOT’s Bicycle program. We will continue with the implementation of the Bicycle Program as described in the Statewide Bicycle Policy to promote safe and pleasant biking environments. The Policy supports the concepts of a Livable Delaware by preserving existing bicycle facilities as the roadway system expands and by encouraging the placement of new facilities.
- DTC Bus Stop Program. DTC will continue with the implementation of this program by providing amenities for new stops, as well as providing upgrades for existing stops.
- Sidewalk policy and Pedestrian policy. We will revise this site development requirement to a wide-ranging policy that emphasizes broad pedestrian access and accommodation issues. As noted in the ‘Sidewalk Policy,’ we will expand our current Sidewalk Policy to include a Pedestrian Policy, that addresses not only how pedestrian facilities should be designed, but when they should be included as part of a project.
- Improve/expand transit. In addition to the plans set forth in DTC’s five-year and long-term plans, we will assist in exploring opportunities for expanding facilities and services, park and ride, and rail connections.
- Ridesharing. We will look to expand the statewide ridesharing program and improve visibility through

a market-based program administered through Delaware businesses, community organizations and public institutions.

- Public Awareness. Finally, we will work with DTC and other State agencies to increase public awareness of alternative travel modes by exploring new marketing methods.

Improve ease of access between modes to facilitate non-auto travel. To encourage non-auto travel, it is necessary to provide an environment that gives primacy to pedestrian comfort and circulation. Three actions will help to realize this flexibility:

- Highway Operations Maintenance Policy. We will include efforts or policies to encompass sidewalks and bike paths that are situated outside of mapped subdivisions.
- Bicycle and pedestrian improvements. Projects that provide greater connectivity to other modes will be prioritized.
- Interconnectivity. We will strive to improve the connection between existing transportation facilities and services including park-and-rides, rail transfer stations, etc.
- **Encourage innovative transportation solutions.**

Pursue a cost-effective, market-based approach to providing transportation options and solutions. Innovative ideas will be key in the future to encourage new and workable transportation solutions for the State. We will seek out such opportunities.

Demonstrate willingness to test unprecedented programs or methodologies. To enable the introduction and promotion of travel options other than the private automobile, it is necessary for the Department to be proactive and to identify and research alternative travel modes.

Continue to collect and disseminate real-time traveler information. The ability to quickly and accurately gather, process and disseminate travel information greatly improves travel choices and perceived quality of life. We will continue efforts with the statewide integrated transportation management system (DelTrac) and other programs to enhance the current systems in place.

Actively seek opportunities to showcase federal transportation demonstration projects in Delaware. Federal funds exist for transportation-related demonstration projects that can later serve as case studies for cities around the country. Delaware provides ripe ground for such ideas.

Table 2. Summary of the Policies and Actions encompassed in the Travel Opportunities and Choices Principle

Travel Opportunities and Choices - Policies and Actions		Time Period			
		Short-Term	Medium-Term	Long-Term	Changing
Travel Opportunities & Choices "Maximize travel opportunity and choice for all Delawareans"	Promote an expanded variety of travel opportunities to workplaces, services, and recreational and work destinations, and provide reasonable travel options for those who have limited mobility options.				
	<i>Improve and expand facilities and services dedicated to modes other than the single-occupant vehicle.</i>				
	<ul style="list-style-type: none"> • Full implementation of the DTC Five-Year Plan and the DTC Long-Range Plan. 	X	X	X	
	<ul style="list-style-type: none"> • Continued implementation of DeIDOT's bicycle program as described in the Statewide Bicycle Policy. 	X			
	<ul style="list-style-type: none"> • Continued implementation of the DTC Bus Stop Program. 	X	X		
	<ul style="list-style-type: none"> • Modify and revise Sidewalk Policy to emphasize broad pedestrian access and accommodation issues. 	X			
	<ul style="list-style-type: none"> • Explore additional opportunities for transit. 			X	
	<ul style="list-style-type: none"> • Expansion/promotion of statewide ridesharing program. 		X		
	<ul style="list-style-type: none"> • Exploration of new marketing methods for increased public awareness of alternative travel modes. 		X		
	<i>Improve ease of access between modes to facilitate non-auto travel.</i>				
	<ul style="list-style-type: none"> • Maintenance and Operations Policy to include non-subdivision sidewalks and bike paths. 		X		
	<ul style="list-style-type: none"> • Prioritize bicycle and pedestrian projects that provide greater connectivity to other modes. 				X
	<ul style="list-style-type: none"> • Improve the connection between existing transportation facilities. 		X		
Encourage innovative transportation solutions.					
<i>Develop cost-effective transportation options and solutions based on geographic, demographic and market-demand needs.</i>		X			
<i>Demonstrate willingness to test unprecedented programs or methodologies.</i>	X				
<i>Continue to collect and disseminate real-time traveler information</i>				X	
<i>Actively seek opportunities to showcase federal transportation Demonstration Projects in Delaware</i>			X		

Cost Effectiveness

“Use Cost-Effectiveness as one of our fundamental principles”

Since DeIDOT is a State agency funded through various taxes and fees, it is essential that the actions of the Department be considered in terms of “are we doing this in a cost effective way?” This question relates well to the Department’s “ARE” policy of being Accessible, Responsive, and Efficient.

As such, transportation-related decisions will continue to be made taking into account whether the decision can be viewed as making best use of the Department’s resources. The following policies and actions provide further detail on this intent:

- Use cost effectiveness as a key indicator when prioritizing projects or choosing among

alternatives – optimizing the investment of resources across all modes and balancing our fiduciary responsibilities with social equity mandates.

Develop standardized project performance measures. A consistent process for evaluating projects across a variety of modes will enable the Department to make sure that projects are all evaluated on a level playing field. We will work to define a set of measures for gauging costs, benefits and cost effectiveness of projects in collaboration with other State agencies as appropriate. The intent is that these measures will be incorporated into DeIDOT’s Project Planning and Development Processes.

“Back-to-Front” Evaluations. In addition to the customary practice of using a project’s objective or vision to determine potential alternatives or solutions, we will also assess whether unstudied options may exist that would fulfill

a project's objectives at a lower cost than the "preferred alternative." Looking at a project from a different perspective may yield some insight to ways of achieving the same outcome, but at a lower cost. For example, in a corridor slated for a new passenger rail line, there may be merit to considering lower cost transportation alternatives such as bus service.

Conduct Post-Project Assessments. We will look at a project's cost effectiveness in the "as built" stage, once it is completed, to obtain lessons learned for future decision making and project prioritization. These insights will be incorporated into DelDOT's Project Planning and Development Process.

DTC Fare and Service Efficiency. DTC, as a subsidiary of DelDOT, regularly reviews service levels and fares to ensure that they are connecting people to their destinations in an affordable, safe, and efficient manner. In terms of fares, DTC will be responsible for providing affordable accessibility via improved efficiency in administering fares and partnerships with employers to provide transit passes. The monies obtained from fareboxes (and the resultant farebox recovery ratio) will have less importance when compared with other areas to measure for efficiency, such as bus route performance and management of paratransit operations. However, these measures will vary depending on the area served – for example, urban areas in Wilmington may have greater service efficiency when compared with less-dense areas in Kent County.

- **Maintain and use existing resources and equipment as a means towards cost effectiveness.**

Facility inventory. An up-to-date database of our highways, roads, bridges, yards, garages, park and ride lots, buildings, etc. will provide an efficient and effective means of understanding the status of the Department's resources and serve as input to the Planning and Project Development Process.

Develop a maintenance management system. All of Delaware's transportation-related assets, both highway and transit, will benefit from the development of a program to address prioritization of maintenance activities. We will develop and implement such a program, with results serving as input to the Prioritization Process for the Capital Transportation Program (CTP).

Pavement management program. We are responsible for maintaining and rehabilitating many miles of the extensive network of Delaware's interstate highways, state highways, county roads and suburban streets. While there is a pavement management program in place to rank roads based on pavement condition, traffic, public facilities, etc., we will expand this program to include all state-maintained subdivisions.

Bridge management program. We are also responsible for maintaining and rehabilitating publicly-owned bridges throughout the state. A Bridge Management Manual is in place, but we will commence a Dam Safety Inspection Program to survey, prioritize, inspect and maintain the dams. The goal of these efforts is to build public and private partnerships to prevent the failure of dams, which lead to washouts of bridges, roadways and other properties located in floodplains.

- **Take advantage of technology as a means of providing efficient services.**

Continued implementation of DelTrac. As stated in the previous Plan, we will improve the management of Delaware's transportation system through the application of Intelligent Transportation System (ITS) technologies. The DelTrac system and associated policies, procedures, and operations were implemented to improve the safety and efficiency of the transportation system thereby eliminating or delaying the need for new road construction. We will continue to implement the DelTrac program along the 250 most critical miles, with planned completion in FY04. The program will continue to incorporate the ideas of Livable Delaware.

Pursue advanced transit and auto technologies. We will continue to be a national leader in the pursuit of advanced transit and auto technologies, such as real-time information for transit riders and drivers, "smart" signal systems, electronic tolls, alternative fuel vehicles, variable message and speed signs, integrated fare systems with other transit agencies, and an interactive web site for DTC transit information and fare media.

Research, development and technology transfer program. We (with funding provided to the University of Delaware) will continue to make significant investment in research programs with the goal of these efforts continuing to be the identification of practical and cost-effective methods to promote the safe and efficient movement of people and goods in and through the state. We will also publicize the results of these efforts via their website and a published document.

Continue the use of an Incident Management Program. Services such as a motorist assistance patrol or dynamic message signs along a segment of busily-traveled highway are a relatively inexpensive way to quickly lessen the impact of road obstructions that could lead to major traffic delays. We are currently working to implement the statewide integrated transportation management system (DelTrac) into all phases of transportation planning and development. We will continue to explore the potential for expanded incident management programs for all major facilities within Delaware.

Table 3. Summary of the Policies and Actions encompassed in the Cost Effectiveness Principle

Cost Effectiveness - Policies and Actions		Time Period			
		Short Term	Medium Term	Long Term	Ongoing
Cost Effectiveness "Use cost-effectiveness as one of our fundamental principles"	Use cost effectiveness as a key indicator when prioritizing projects or choosing among alternatives – optimizing cost-effectiveness across all modes and balancing cost-effectiveness with social equity mandates.				
	Develop Standardized Project Performance Measures.			X	
	"Back-to-Front" Evaluations.		X		
	Conduct Post-Project Assessments.		X		
	DTC Statewide Fare and Service Efficiency.	X			
	Maintain and use existing facilities and equipment as a means toward cost effectiveness.				
	Facility Inventory Update.	X			
	Maintenance Management System Development.	X			
	Pavement Management Program to rate all state-maintained subdivision streets.				X
	Take advantage of technology as a means of providing efficient services.				
	Continued implementation of DelDOT.	X			
	Pursue advanced transit and auto technologies.		X		
	Investment in Research, Development and Technology Transfer Programs.	X			
	Incident Management Program.				X

Quality of Life

"Continue to emphasize quality of life as our foundation"

Quality of life continues to be an important topic among those living and doing business in Delaware – from housing and job opportunities, to cultural and recreational amenities, all of these elements contribute to Livable Delaware and the attractiveness of our State. For us, the transportation network is the common thread that ties all of these things together. If the transportation network is such that one’s ability to get to work, school, shopping, and other activities is stressful and time consuming, quality of life is obviously diminished.

Quality of life can also be perceived in things as subtle as enjoying the outdoors on a crisp fall day or the ability to run errands in an efficient manner because the grocery store, daycare, and drycleaners are all within safe and short walking distance of each other. At DeIDOT, quality of life is regarded as an underlying current that affects all decisions and the environment in which we live and work. Access to these opportunities is important, and we set the direction for how these transportation choices are provided.

For example, when planning for a new bypass, it is important to consider the positive and negative implications

of the action for both residents and businesses in the area, as well as those traveling along that stretch of road. Quality of life may be improved for commuters who used to travel through a series of traffic lights to traverse the area, but there might be adverse impacts to businesses that relied on this drive-by traffic for a portion of their business.

We are attentive to the fact that for projects to be sustainable, they must conform to the essential rationale of Livable Delaware. Therefore, the quality of life principle is an essential consideration that should be linked to every decision that we make. The following policies and actions describe ways in which we will work to ensure compatibility with Livable Delaware and an improved quality of life within the State.

- **Provide environmentally sensitive transportation solutions that minimize negative environmental impacts and promote improved quality of the environment.**

Noise Abatement Policy. There is a delicate relationship to be maintained between current and future residential areas, and the noise levels associated with certain types of transportation improvements in the areas around these developments. While current guidelines are in place, we will

enhance their enforcement and explore the potential for legislation to support these requirements at the local level.

Wetlands Mitigation. Highway-related construction activities oftentimes impact adjacent waterways and wetlands. We will continue to work on the creation of a wetland “banking” system, which would build wetlands in advance of projects for the purpose of wetland mitigation.

Air Quality. While not always apparent, many parts of Delaware continue to suffer from serious air pollution. It is critical that we work to improve air quality, not only for improved quality of life, but in order to continue receiving Federal funding for highway and transit projects. Accordingly, we will develop a public outreach program to educate travelers about using the transportation system in a manner that minimizes short-term adverse air quality impacts and protects public health. We will work with DTC, other state agencies and the larger public to continue and expand special programs, such as Ozone Action Days.

Water Quality. As part of the Consent Decree between DeIDOT and the United States Environmental Protection Agency’s Department of Natural Resources and Environmental Control (DNREC), we will investigate additional measures to improve the quality of stormwater runoff. We will also consider water quality early on in the decision-making process as one of the environmental impacts resulting from roadway improvement and development projects.

Environmental Stewardship. The intent of Environmental Stewardship is to go ‘above and beyond’ compliance with environmental laws and regulations, to taking voluntary action to improve the environment and quality of life whenever possible. Environmental Stewardship implies weaving environmental protection into programs, even into attitude and ethic, and becoming trustees of the environment. We will seek to become environmental leaders, integrating stewardship principles into programs and agreements. We will also identify opportunities and implement them through partnerships with the community, environmental regulators, and environmental groups.

- **Enhance security and safety for all DeIDOT services and facilities.**

Safety and Security Education. While roads and transit systems can be designed for safe speeds, protection from terrorist activity, and other factors, we must educate the public about the safe use of these facilities. An informed person is more likely a safer user of the transportation system. We will continue to implement and expand public education programs for improving transportation safety and security.

Statewide Sign Study and Signature Route Sign Improvement Implementation Plan. We have the authority

and responsibility to mark highways and streets through the use of signs. Easily finding one’s way in the State continues to be a challenge that affects quality of life. To address this concern, we will formulate and adopt a sign improvement plan to guide the framework for programs, guidelines, standards, training, fabrication, construction and maintenance to ensure that basic design criteria and maintenance needs are met. We will also review current guidelines to develop a sign policy consistent with the Manual of Uniform Traffic Control Devices (MUTCD).

Statewide Transportation Security Plan. As part of DeIDOT’s efforts to enhance system-wide security for all DeIDOT facilities, we will prepare a plan to minimize vulnerabilities for all of our employees and facilities. This plan will take a look at facilities in all modes statewide, including our Transportation Management Center (TMC). Our role in prevention, communications, response, and recovery from terrorist activity and other disasters will also be incorporated into the plan.

Safety Improvements. Numerous safety features can be incorporated in the planning and design stages of road projects; however, we do not currently have a formal manner in which to consider such practices. We will identify, prioritize and address safety improvements through a Safety Management System and through the Highway Safety Improvement Program. The Incident Management Program will also be expanded to include the use of patrols along highly-used corridors, to more efficiently identify incident causes, and address them to reduce the congestion caused by incidents.

Continue to ensure that Transportation Enhancement Programs are implemented in the context of local economic development projects. Transportation Enhancement Programs must be congruent to, and complement, any local projects currently underway to enhance the economic development of specified areas in Delaware.

- **Make transit facilities convenient and attractive.**

Stations, shelters, and bus stops that are easily accessed and well-situated are more likely to be utilized than those that are randomly placed. In addition, transit facilities with a consistent “theme” can be easily identified as part of Delaware’s transit network. As promoted in another Plan principle to “maximize travel opportunity and choice for all Delawareans,” we will work with DTC to enable implementation of the Bus Stop Program and Sidewalk Policy. Please refer to the Travel Opportunities & Choices Section for further discussion.

- **Promote safety and quality of life through contextual design of transportation improvements.**

Continue implementing context-sensitive design programs. We strive to include context-sensitive design as part of every project. To achieve this, we have developed an extensive series of programs to ensure that plans and designs for many transportation-related projects take into consideration the surroundings, circumstances and perspectives that will influence quality of life. In fact, up to five percent of a project's construction costs can be allocated to these types of improvements. The following programs are included under this action:

- *State Scenic & Historic Highways Program.* Delaware is one of the few states in the country that does not have a state-level scenic byways program to protect scenic, historic, or other features to the extent that they can be experienced by traveling along a roadway. We will complete and implement a program to develop corridor plans that consider development regulations and transportation program changes needed to preserve particular roadway features.
- *Surface Treatment Conversion Program.* Roads paved with tar and chips are often less desirable to drive or bike on as compared to those paved with a hot-mix. While these less-traveled roads would not likely be chosen as candidates for paving with hot-mix, the Surface Treatment Conversion Program allows for suitable roads to be ranked for consideration based on traffic, average number of residences per mile, and public facilities. We will continue to implement this program.
- *Tree Preservation Policy.* Visual community enhancements, such as trees and right-of-way landscaping, are essential to enhancing Delaware's quality of life. While a policy is currently in place, it does not reflect Delawarean's desires to increase beautification/landscaping activities and decrease tree removal activities. This policy will be revised to support the Context Sensitive Design Policy, as well as the new scenic byways program. As part of the revision, landscaping would be allowed in narrower rights of way.
- *Continued Implementation of Roadside Environment/"Enhancing Delaware Highways" program.* For reasons of both aesthetics and cost-effectiveness, it makes good sense to strive to use native plant species to complement the already existing non-invasive plants on Delaware's roadsides. We will work to achieve this with the guidance of an advisory group, civic associations, and other related organizations. We will also develop a manual to provide procedures for vegetation management on roadsides.

Continued refinement and implementation of Design Development Process. We already have in place a series of manuals to ensure that various types of projects comply with applicable design standards and follow appropriate DeIDOT procedures. However, these manuals do not frequently reference or incorporate each other along with relevant DeIDOT manuals and practices. The recently-implemented Design Development Process defines how conceptual plans evolve into a project ready for construction. The following documents will be updated at least every five years in accordance with this process:

- *Road Design Manual*– Every five years, this update will incorporate current trends, design criteria, context sensitivity, multi-modal facilities and intelligent transportation systems.
- *Project Development Manual* – Every five years, we will conduct a review of the steps needed in the development of a project from concept through design, including Federal and State regulations, and education of the process to other State and county agencies and the public.
- *Bridge Design Manual* – This update will be conducted every five years to incorporate current trends, design criteria, context sensitivity, and other innovations in bridge and structure design.
- *Design Project Manager Guidebook* – We will consider updates to this staff reference book on a regular basis.
- *Transportation Enhancements (TE) Manual* – The Transportation Enhancements Program allows us to provide federal funding to local governments and other agencies and organizations for projects that enhance the transportation system but may not normally be funded by the Department. We will revise the TE Manual on a regular basis, with potential revisions to areas such as the project scoring and ranking process and eliminating potential conflicts of interest.
- *Traffic Calming Design Manual* – We have led the development of this manual which describes ways to offset the effects of excessive traffic and allow for safe pedestrian and bicycle use in typically automobile-based communities. We will update the manual regularly to include national best practices and changes in Federal and State guidelines and policies.
- *Mobility Friendly Design Standards* – These roadway design standards promote greater use of transportation facilities and services by bicyclists and pedestrians. We will encourage the application of design standards that encourage pedestrian and bicycle utilization, particularly in transit-served areas. We will also consider making these

standards mandatory in community and developing areas (as per the State Investment Strategies Map, p. 10).

Broaden our skill base and sensitivity toward contextual design. While it is possible to rely on external sources for guidance and assistance with innovative designs and outreach efforts, having internal resources for such skills will allow us to incorporate contextual designs more seamlessly into the Department's design activities. Two specific actions are identified:

- *Enhance our landscape architecture capabilities* – The creation of a permanent in-house landscape architect position would allow us to better address the needs of a community by appropriately fitting in transportation improvements.
- *Continue on-going design training for our staff* – Similarly, we will continue the learning process, enhancing our ability to better address quality of life issues.
- *Undertake comprehensive project scoping with affected communities as part of context-sensitive design process.* We will schedule meetings with the local communities in which projects are initiated in order to obtain feedback and input on the design, so the project, from a community standpoint, blends well with the local people and environment.

Economic Development and Growth

“Provide transportation opportunities that support economic development and growth.”

Economic development is an essential component of a livable environment. Communities that are livable have strong, vibrant economies that encourage local enterprise, serve the needs of residents, and promote stable employment. Transportation is once again, a key element that facilitates the linkages between suppliers and manufacturers, consumers and goods, and workers and employers.

Unfortunately, when traffic increases, as projected to occur, the efficient movement of goods and people becomes more difficult, and congested areas become less attractive for new businesses and others to locate. Transportation decisions and improvements can positively affect the ability of employers to operate in areas with adequate transportation and public transit services, but the enabling policy must be in place to support these choices.

- **Promote transportation's role in local and statewide economic development by improving**

the accessibility of:

- **Freight transportation for industry and manufacturing**
- **Consumers to goods and services**
- **Workers to jobs**

Regularly coordinate with appropriate stakeholders to identify key projects or methods for promoting economic development. We are well-positioned to work with other agencies and developers to create opportunities that will best serve the needs of residents, workers, and businesses. We will coordinate with agencies and local government partners (such as DEDO) to identify projects, investments or methods where we can support economic development. By ensuring that adequate transportation choices are available to address these needs, we are encouraging growth and expansion in targeted areas (as determined in the Statewide Strategies for Policies and Spending, for example).

Identify a process and key measures to consistently evaluate and prioritize projects according to potential to promote economic development. We currently use a prioritization process to evaluate the soundness of proposed projects based on data and subjective information. Several modifications to this process are planned to incorporate Statewide Strategies for Policies and Spending and Livable Delaware. A key consideration of these amendments will include a project's impact on economic vitality, and its resultant effects on the surrounding environment.

Seek to reestablish local rail freight in selected areas, with an expanded role for short-line operators. The projected increase in auto and truck traffic on Delaware's roads can be reduced slightly if some of this growth is captured by rail (both passenger and freight). Since some of the state's rail segments are in a state of disrepair, we will assist in investigating how these lines can be brought back into service, and quantify the benefits of doing so. With this understanding in place, we will work with the state's rail operators to determine a series of long-term improvements that will bring about the most relief to the state's highway network.

Enhanced access to the Port of Wilmington. The Port of Wilmington is a major contributor to the State's economy. It continues to be one of the nation's leading export ports for automobiles and is the world's leading import facility for bananas. Growth in goods movement at the Port need to be better handled by the transportation modes that serve this area. We will explore improving access to the Port via enhancements to the surrounding rail and road networks.

Examine potential for enhancing air freight capabilities in the State to service the market for high-value, low-volume goods. The potential exists to better serve manufacturers and businesses in this fast-growing market segment. We will examine opportunities among the State's ten airports for transporting time sensitive materials.

Quality of Life - Policies and Actions		Sho ld be Tar get	dis m i n i s h	Acco m p l i s h	Es s e n t i a l	Origina l
Quality of Life "Continue to emphasize quality of life as our foundation"	Provide environmentally sensitive transportation solutions that minimize negative environmental impacts and promote improved environmental quality.					
	<i>Continued application of Noise Abatement Policy.</i>	X				
	<i>Wetlands mitigation policy to support wetland banking</i>	X				
	<i>Air Quality Outreach Program</i>		X			
	<i>Consideration of water quality as an environmental impact that results from roadway improvements and development projects.</i>	X				
	<i>Environmental Stewardship actions.</i>					X
	Enhance security and safety for all DelDOT services and facilities.					
	<i>Continue to implement and expand public education programs for improving transportation safety and security.</i>		X			
	<i>Statewide Sign Study and Signature Route Sign Improvement Implementation Plan.</i>	X				
	<i>Develop a statewide transportation system security plan for all of our facilities.</i>	X				
	<i>Safety Management System and Highway Safety Improvement Program</i>	X				
	<i>Continue to ensure that Transportation Enhancement Programs are implemented in the context of local economic development projects.</i>					X
	Make transit facilities safe, convenient and attractive. [See Travel Opportunities & Choices]					
	Promote safety and quality of life through contextual design of transportation improvements.					
	<i>Continue implementing context-sensitive design programs:</i>					
	• State Scenic & Historic Highways Program.	X				
	• Surface Treatment Conversion Program.	X				
	• Tree Preservation Policy Revisions.	X				
	• Roadside Environment/"Enhancing Delaware Highways" program	X				
	<i>Periodic Updates of the Design Development Process</i>					
	• Road Design Manual Update.					X
	• Project Development Manual Update.					X
	• Bridge Design Manual Update					X
	• Design Project Manager Guidebook Update					X
	• Transportation Enhancements (TE) Manual Update					X
	• Traffic Calming Design Manual Update					X
	• Mobility Friendly Design Standards.					X
	<i>Broaden DelDOT's skill base and sensitivity toward contextual design</i>					
• Landscape architecture capabilities.	X					
• On-going design training for DelDOT staff.		X				
• Undertake comprehensive project scoping with affected communities as part of the context sensitive design process.		X				

Investigate and promote alternative means for accommodating growth in general aviation and in providing access to commercial airports. Passenger air travel continues to be a popular travel mode, and although none of Delaware’s airports provide commercial passenger service, the need exists to acknowledge Delawarean’s dependence on air travel and provide related supporting services. We will also consider the impacts on surrounding ground transportation modes that service these airports.

Identify ways in which we can bring together private interests for mutually beneficial private transportation projects. Public/private partnerships are frequently an effective means for mutually beneficial improvements to take place

Strive to incorporate employee transportation opportunities when in the planning stages of economic development projects.

- **Support economic development and redevelopment of existing communities.**

Sale and disposal of excess land policy. DeIDOT purchases parcels of land during the planning stages of road and highway construction projects. In some cases, portions of this land are left over, and it is in our best interest not to hold onto this land. We will revise the current policy in place to reflect the intent of Livable Delaware and State Investment Strategies. We will review each parcel with respect to whether the parcel is in a rural, community, urban or employment area, and dispose of the property in a manner that is consistent with Livable Delaware and the State Investment Strategies.

Community identification of redevelopment needs. Community-wide and regional collaboration typically results in the most prosperous and livable places. We realize our

Table 5. Summary of the Policies and Actions encompassed in the Economic Development and Growth Principle

Economic Development and Growth - Policies and Actions		Time Period			
		Short Term	Medium-Term	Long Term	Ongoing
Economic Development and Growth <i>“Provide transportation opportunities that support economic development and growth”</i>	Support local and statewide economic development by improving the accessibility of: <ul style="list-style-type: none"> • Freight transportation to industry and manufacturing. • Consumer markets to goods and services • Workers to jobs 				
	<i>Regularly coordinate with appropriate stakeholders to identify key projects or methods for promoting economic development.</i>		X		
	<i>Identify processes and metrics to evaluate transportation investments based on their potential to promote economic development.</i>		X		
	<i>Support initiatives that seek to encourage and facilitate:</i> <ul style="list-style-type: none"> o Reestablishment of local freight in selected areas, with an expanded role for short-line operators o Opportunities for enhanced access to the Port of Wilmington via enhancements to the surrounding rail and road networks. o The potential for enhancing air freight capabilities in the State to serve the market for high-value, low-volume goods 		X	X	
	<i>Investigate and promote alternative means to accommodate growth in general aviation and commercial airports.</i>		X		
	<i>Strive to incorporate employee transportation opportunities when in the planning stages of economic development projects.</i>	X			
	<i>DeIDOT facilitation of private/public transportation projects</i>	X			
	Support economic development and redevelopment of existing communities <i>[See Development]</i>				
	<i>Amendment to Sale and Disposal of Excess Land Policy.</i>	X			
	<i>Regularly coordinate with communities and business interests to identify redevelopment needs and the role transportation can play in supporting these needs.</i>			X	

responsibility in identifying redevelopment needs and the role transportation can play in supporting these requirements. With this in mind, we will coordinate efforts with other state agencies to ensure social equity, by providing options to get to places such as child care, housing, and jobs. We will also go out into the communities to obtain input and suggestions from residents and business interests.

Planning and Coordination

“Maintain planning and coordination an integral part of our activities”

Ongoing planning supports the proactive character of the Plan and its efforts to project future actions that would be required in a changing transportation and land use environment. Planning is about intentionally setting goals (i.e. choosing a desired future) and developing an approach and strategies to achieve those goals. It encompasses our broader concerns and prioritizes actions that will ultimately shape and guide the Department into the future. Planning thus provides a clearly defined direction that serves as a guide to management and decision-makers.

A key element to the planning process is coordination with other agencies. By liaising with other government agencies to identify priority actions, review processes and investments of resources will naturally prevent unnecessary duplication and focus efforts strategically across various organizations and responsibilities.

The following policies and actions have been identified to make planning and coordination an integral part of our activities:

- **Coordinate activities and investments with other government agencies and offices in Delaware.**

Rationalize and improve our coordination with other agencies and offices. In order to begin to realize this policy it will be necessary to first enhance our coordination with other agencies and offices. This would logically include creating an inventory of our current inter-agency and inter-state efforts, identify opportunities for improvements, and implement actions to focus or strengthen coordination on development-related policies where appropriate.

Revisit the Statewide Infrastructure Map with other agencies. Given the rapid nature of growth in the State, it is necessary to frequently review growth patterns to ensure that infrastructure is keeping pace and quality of life is not adversely impacted. As such, we will revisit the Statewide Infrastructure Map with other State agencies as part of a potential cabinet committee role and work with these departments to confirm and agree on the nature and delineation of the Statewide Investment Areas. This will

ensure that investment areas are still appropriate under current conditions and changing environments.

Prioritization process for Capital Transportation Plan (CTP) Projects. From the principles, policies and actions contained in this document, we will more precisely carve out projects that will be implemented over the next few years and include them in the CTP for funding consideration. We will revise the existing prioritization process and tie this project ranking closer to the Livable Delaware executive order.

Transportation Enhancements Policy. We will revise the Transportation Enhancements Policy (TEP) Manual to improve the scoring and ranking process, so that strong projects are moved forward, and those less-developed or with open issues receive the help they need to move them along. This revision will also clarify the project sponsor definition, and eliminate the potential conflicts of interest that are generated when members of the Transportation Enhancements Technological Advisory Committee (TETAC) also nominate projects.

Communicate with neighboring states to ensure that their respective long range transportation plans are consistent with each other. Delaware is fortunate to be surrounded by states that share the same concern for livability and quality of life. We will further seek to strengthen these relationships as part of the long-term planning process to achieve mutual benefits.

- **Implement ongoing monitoring of activities and actions, measuring progress against long-range planning strategies.**

Develop performance measures with the assistance of stakeholders, and periodically evaluate our progress and performance. To ensure that this Plan has been effectively implemented, it is necessary to evaluate and track the relative progress of the various actions described throughout the document. We will define performance measures and this progress will be periodically monitored, as described in the Implementation and Monitoring section of this Plan.

- **Respond to public concerns and needs when creating policies and documents.**

Strong public involvement process for planning projects and policies. The people who live and work in Delaware are the ones most familiar with the State’s transportation problems, and best able to provide input on ideas for improvements. The Department will therefore continue to consult with community groups and other stakeholders when planning projects and shaping policies, and keep them informed throughout the planning process.

Publication of easy-to-understand public materials. To facilitate the public involvement process, we will work to

develop and publish public materials in an uncomplicated and easy-to-understand manner.

- **Promote planning as a key component of our long-term effectiveness, and implement actions to support effective planning and management.**

Long-Range Transportation Planning. We will continue to develop, update and implement various internal long-range planning efforts within their realm of responsibility including the following:

- *Statewide Long Range Transportation Plan Update* – Update every five years to incorporate policy, demographic and other changes.
- *Sussex County Long Range Transportation Plan* – Provide assistance with periodic updates to ensure consistency with other metropolitan and local authority plans.
- *DTC's Five Year and Long-Range Plans* – Provide assistance with periodic updates to reflect travel trends and transit needs.
- *WILMAPCO's and Dover/Kent Metropolitan Planning Organization's (MPO) Long Range Plans* – Assist as needed with these plan updates.
- *Asset Preservation Requirements.* Incorporate asset preservation requirements in long-range transportation plans.
- *Technology Impacts.* The full breadth of new technologies that will become available during the life of this plan is difficult to predict. However, we will pursue these new technologies assertively, adapting quickly to improved ways of enhancing transportation throughout the State while promoting our mission and vision.

Other planning studies. We will also continue to conduct other relevant corridor and area studies and other transportation studies as needed or conduct necessary land use analyses to determine the most appropriate and effective transportation facilities and services.

Planning/Project Development Manual. We will implement and follow a Project Development Manual that details regulations and processes to be followed in the conduct of projects. Training materials for both the public and other agencies will be created.

DeIDOT facilities and service plan revisions. We will develop or revise system plans for facilities and services to enhance planning and management activities. These will be included in DeIDOT's Facilities Plan.

Long-Range Financing

Current Financing

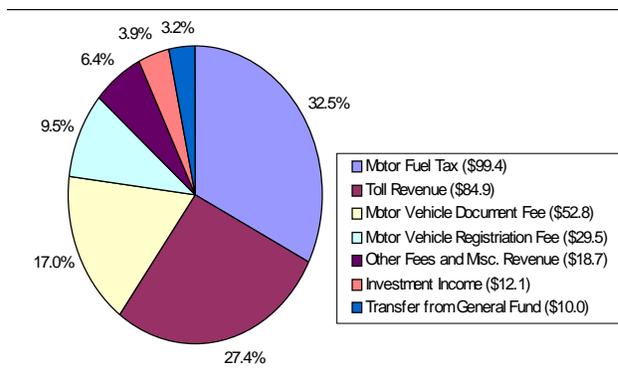
Two major sources of transportation funding exist in Delaware: the Transportation Trust Fund (which includes proceeds from the sale of Revenue Bonds) and Federal Funds. These funds support everything that we do – from maintaining roads and bridges, to operating transit buses, to building new infrastructure.

Transportation Trust Fund

Transportation Trust Fund revenues are our largest and most stable source of funds (see **Figure 3**). Established in 1987, the Fund is the State's financing vehicle for all transportation capital and operating expenditures, including transit. The Fund also backs general obligation bonds for transportation projects. The Fund was created to consolidate transportation-related revenue and dedicate it to transportation projects.

Primary sources of income for the fund are motor fuel taxes, toll revenues, and motor vehicle document and registration fees. Title fees, driver's license fees, property sales, other miscellaneous revenue and investment income round out the balance of the Trust Fund's revenue.

Figure 3: FY2001 Trust Fund Revenue*



* millions of dollars

The Trust Fund's revenue stream remains fairly stable, predictable and reliable from year to year, because the Fund's revenue sources are comprised almost entirely of fees related to driving or owning a vehicle. Experience from the past decade shows that vehicle ownership and driving activity grow steadily, allowing us to predict future Trust Fund revenues reliably.

On the other hand, we cannot easily change rates for user fees or fuel taxes that we receive, and we must abide by several constitutional and statutory (legislative) spending limitations. For example, the State, of which DeIDOT is a part, cannot issue general obligation debt beyond 5% of its General Fund revenue in the same year, and total debt

Table 6. Summary of the Policies and Actions encompassed in the Planning and Coordination Principle

Planning and Coordination – Policies and Actions		Time Period			
		Short Term	Medium-Term	Long Term	Ongoing
Planning & Coordination <i>“Maintain planning and coordination as an integral part of our activities”</i>	Coordinate activities and investments with other government agencies and offices in Delaware.				
	<i>Rationalize and improve our coordination with other agencies and offices.</i>				X
	<i>Revisit the Statewide Infrastructure Map with other agencies.</i>		X		
	<i>Prioritization Process for CTP Projects.</i>	X			
	<i>Transportation Enhancements (TE) Manual Update.</i>	X			
	<i>Communicate with neighboring states to ensure that long-range transportation plans are consistent with each other.</i>		X		
	Implement ongoing monitoring of activities and actions, measuring progress against long-range planning strategies				
	<i>Define performance measures with the assistance of stakeholders, and periodically evaluate our progress and performance.</i>			X	
	Respond to public concerns and needs when creating policies and documents.				
	<i>Continue to support a strong public involvement process for planning projects and policies.</i>	X			
	<i>Ensure that materials intended for public consumption are uncomplicated and easy to understand</i>				X
	Promote planning as a key component of our long-term effectiveness, and implement actions to support effective planning and management				
	<i>Long-Range Transportation Planning</i>				
	• Statewide Long Range Transportation Plan Update.		X		
	• Sussex County Long-Range Transportation Plan Update.		X		
	• Updates to D.T.C.’s Five-Year and Long-Range Plans		X		
	• Assistance with WILMAPCO and Dover/Kent County MPO plan updates.	X	X		
	• Incorporate asset preservation requirements into long range plans.			X	
	• Incorporate impacts of technology as part of long-range transportation plans.	X			
	<i>Other Planning Studies</i>				
• Relevant corridor and area studies.		X			
• Corridor Capacity Preservation Program.					
• Land use analyses to determine the most appropriate and effective transportation facilities and services.			X		
<i>Planning/Project Development Manual</i>	X				
<i>DelDOT facilities and service plan revisions.</i>		X			

payments cannot exceed 15% of the sum of General Fund revenue and Transportation Trust Fund revenue. Also, the State must balance its budget every year, except in emergencies. Several other limitations also apply. In short, we must match our expenditures to a constrained budget of State-generated revenues. Thus, prioritizing projects becomes very important to insuring that Delaware's transportation needs can be met. Some lower-priority projects ultimately must wait to be implemented during later years, when funds become available.

A public bond works very much like a personal loan, though with far greater accountability. The State issues a bond for the purpose of making investments now that it will pay for incrementally over time. The more diverse and reliable the State's revenue stream, the less risky investors perceive, and the more willing they are to buy the bonds. The Transportation Trust Fund plays an integral role in our ability to issue bonds and to do so at competitive interest rates. Because the Transportation Trust Fund is a dedicated, stable revenue stream that we have handled responsibly – and because the State and the Department set strict rules about the Fund's use – investors are more willing to buy our bonds and buy them at lower interest rates. The State and the Transportation Trust Fund have among the very best bond ratings offered in the government market. At lower interest rates, we can keep taxpayers' transportation financing costs low, and the lower interest rates make it easier for us to periodically mount the large capital necessary to fund larger projects.

Federal Funds

Historically, Federal funds account for between 30% and 45% of the Department's transportation funding. Federal funding is apportioned to meet the objectives of two major pieces of Congressional legislation: the Clean Air Act Amendments of 1990 and the Transportation Efficiency Act for the 21st Century (1998), which authorizes Federal funding for transportation projects. These laws constitute a dramatic shift from earlier transportation policy, which focused narrowly on improving system efficiency and expanding capacity. The current laws focus relatively more sensitively on the interplay between land use, transportation, air quality and economic competitiveness. A number of programs, listed below, provide funding for states to meet these policies' objectives.

Federal funding is apportioned by either the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA). In Fiscal Year 2001, FHWA apportioned about \$132 million to Delaware, or 92% of the State's Federal funds, while FTA apportioned about \$12 million. Most funding is formula-driven, based on miles of highway within the State, for example; though some appropriations are based strictly on Federal Administrators'

and politicians' discretion.

Discretionary funding is granted by an act of Congress or through a competitive process in which Administrators prioritize large capital projects. States often compete for discretionary funding, and here again, the Transportation Trust Fund comes into play. The more reliable and dedicated that a State's proposed funding source is, the more likely the Federal government will offer matching grants. I-95's pavement reconstruction is an example of a project funded with discretionary monies.

Of FHWA's funding apportionments to the State, the programs that provide the most funding follow. Funding levels projected for Fiscal Year 2001 are displayed in millions of dollars, along with each program's description:

- National Highway System (\$44.3) – Delaware maintains 320 miles of roadways designated as part of this system. Funding is formula-based.
- Surface Transportation Program (\$34.2) – These “flexible” funds may be used on a variety of highway or transit projects, based on the State's need. To date, Delaware has “flexed” relatively little funding toward transit and has chosen to focus most STP funds on highways.
 - Transportation Enhancement Program – Part of the Surface Transportation Program, this fund supports bicycle and pedestrian facilities, historic preservation initiatives, and beautification.
- Bridge Replacement and Rehabilitation (\$17.3) – This fund helps states replace or repair bridges deemed unsafe, due to structural deficiencies or functional obsolescence.
- Interstate (\$8.7) – In addition to being part of the National Highway System, 23 miles of Interstate highways in Delaware retain additional funding for maintenance.
- Congestion Management and Air Quality Improvement Program (\$8.7) – Kent and New Castle Counties fail to attain Federal air quality standards; thus, the State qualifies for these funds, which must be used to improve air quality. Typical projects include those that would reduce congestion by providing alternative transportation options or improve air quality through reduced auto dependence or the use of alternative fuels.
- Discretionary Funds (\$4.4) – Supplemental to funds authorized by the Transportation Efficiency Act, Delaware also is eligible to receive discretionary funding – for example, to reconstruct the pavement on I-95.

Funding Prioritization Process

Every year, we are faced with funding requests and opportunities that exceed available funds, and the Department must prioritize which projects merit investment. We handle prioritization through a strategic approach that begins with a numerical ranking process. Projects first are grouped into pools – for example, bike improvements, roadways, etc. – and are ranked within each pool against similar, competing projects. Several factors affect our ranking, including:

- our assessment of needs based on strategic objectives, performance monitoring results, public input, and traveler surveys;
- statewide goals set by the Governor; and
- regional goals set forth by the Wilmington Area Planning Council and the Dover/Kent County Metropolitan Planning Organization, the regional planning bodies covering New Castle and Kent Counties, respectively.

Then the pools are weighted, according to our long-range policy objectives. Each project ultimately receives a score and ranking among all projects. This theoretical ranking provides a starting point for evaluating competing projects in the context of other real-world considerations.

Real-world opportunities and constraints then factor into the decision process. For example, a particular new bike lane might rank high on the list of preferred projects, such that it normally would be implemented immediately. However, if the underlying roadway is scheduled for complete reconstruction in two years, we might bundle the new bike lane with the roadway reconstruction, and delay the bike lane's implementation. This type of bundling insures that we minimize redundant investments and invest resources most efficiently. In another example, a particular sidewalk improvement might rank near the bottom of preferred projects, such that it would not be implemented for a couple of years. But if the adjacent roadway ranks high for expansion during the upcoming year, the sidewalk improvement also might be undertaken, to minimize disruption and economize on construction activities. Again, project timing is adjusted to match real-world constraints and opportunities, in a manner that maximizes the effectiveness of our investments.

A second type of real-world influence is political. For example, political leaders may identify a project or set of projects as being pivotal to a broader economic development or revitalization plan. These projects typically skip the numerical ranking process and are expedited or delayed to accommodate these broader directives.

The multi-faceted prioritization process ultimately insures that Delaware invests its statewide transportation resources most efficiently – addressing specific

transportation needs wherever they occur in the State, responding to regional and statewide planning objectives, and promoting Delaware's livability in the most effective manner possible.

2025 Outlook: DelDOT's Greatest Financing Challenge

Over the long-term, as the State's elderly population grows and life expectancy extends, Delaware's proportion of working-age population will decrease dramatically. Especially after 2010, the State will need to accommodate growing social and economic needs with a proportionally much smaller tax base. Transportation financing stands to experience the full brunt of these demographic shifts. Transportation will compete for a significantly smaller State budget (in terms of real dollars, per capita), with other social and economic needs that are sure to grow in importance.

Within the State, too, counties and various municipalities will compete for limited funding more aggressively than they do today. Counties are likely to place more pressure on us to base project funding decisions on particular criteria that favor themselves, and we will need to respond in some consistent manner.

Second, per capita auto ownership and fuel consumption is likely to drop over the long-term – as a result of the State's aging population (with regard to ownership), and as a result of more fuel efficient vehicles (with regard to fuel consumption). A much greater proportion of Delaware's residents will be transit-dependent or need special infrastructure accommodations for driving. Demand for highly subsidized, door-to-door paratransit services will be extremely high among the State's elderly and disabled. Currently, such services cost roughly \$23 in subsidy for each paratransit trip that we provide.¹

Third, Delaware's growing infrastructure will show greater signs of aging and need much more care than it does today. Restoration and re-build projects will become increasingly common and necessary. Meanwhile, the need for expansions and improvements is unlikely to decrease, especially with a growing population. The added need for infrastructure maintenance will place greater strains on our budget.

Finally, alternative fuels will become increasingly prevalent. Since our fuel tax only taxes gasoline and diesel, and not compressed natural gas or numerous other alternative fuels, the State stands to lose a considerable amount of revenue if tax laws do not change. An important issue will be how to encourage the shift to alternative fuels, in part through limited taxes on such fuels, without placing too much strain on our budgetary needs.

How will we fund the growing demand for

1. Source: Parsons Brinckerhoff, DTC Five-Year Business Plan planning effort, 2000.

transportation expenditures with a Trust Fund that depends narrowly on gasoline and diesel consumption and driving activity? What should we do now to ready ourselves for the years after 2010, when demands on State agencies will begin competing more aggressively for even more limited funds?

Financing Principles

The Long-Range Transportation Plan promotes three finance-related principles to help guide our long-term decision-making.

1. Continue our responsible stewardship of State and Federal transportation funding.

By continuing to responsibly manage Federal funds and the State's Transportation Trust Fund, we can maintain our ability to meet Delaware's transportation infrastructure and service needs. The Department's successful management of transportation funding should maintain the State's superb bond rating for transportation projects, further leverage discretionary Federal monies where appropriate, and continue to promote the State's ability to meet Delaware's transportation needs.

2. Allocate funding through a prioritization process based on actual need, and in a manner consistent with the Plan.

Perhaps the most explicit articulation of the Department's policies and priorities exists in its annual budget. The Plan, as a guiding policy for investments, should inform the prioritization process, especially at the management levels where our policies are articulated most strongly.

In addition, the funding prioritization process should continue to address actual needs, wherever in the State they may occur. Decisions should not be based on arbitrary measures; rather, investment should respond to actual need.

3. Explore and promote innovative financing techniques to meet unmet needs, and adjust the Trust Fund revenue formula to collect funds from other new sources.

We should explore appropriate, innovative ways to meet the funding needs of valuable projects or policies that cannot be implemented due to fiscal constraints. We should work with legislators now to form a plan that gradually expands the financing alternatives available for transportation investments.

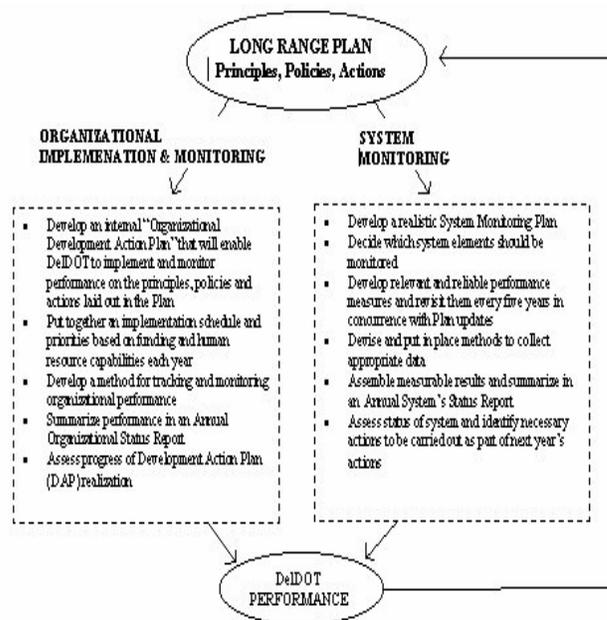
Together, these strategies will help us continue to provide for the State's transportation needs well into the future.

Implementation And Monitoring

Implementation and monitoring are essential components of the Plan. Figure 4 briefly summarizes how the process of implementation and monitoring will take

place. Two distinct yet closely integrated streams of monitoring have been identified. The first stream evaluates our performance in implementing the Plan. The second stream evaluates the state of the transportation system.

Figure 4: Schematic Representation of Monitoring and Implementation



Organizational Implementation and Monitoring

The first component in the Plan's implementation and monitoring effort focuses more closely on the performance of our organization in implementing the Plan. In the creation of the Plan, DeIDOT and our stakeholders have selected policies and actions that we believe will improve the State's transportation system, its economic competitiveness, and ultimately its residents' quality of life. Though it is unlikely that the Plan's action items will be immediately attributable to improvements, the action items included within this Plan represent a synthesis of current understanding and best practices within the transportation profession and form the backbone of our Plan for improving the system. Therefore, their implementation represents the primary means by which the principles of this Plan can be realized.

The purpose of the organizational monitoring program is to examine our performance in implementing the action items of the Plan. The organizational monitoring program, known as the Departmental Action Plan, provides a framework for guiding the Department's implementation efforts and provides decision-makers and the public with a means of assessing how effective we are in implementing the directives outlined in the Plan. The program would act as an

implementation schedule and monitoring mechanism for each of the Action Item listed in the Plan, complete with outlined responsibilities, interim milestones, and deadlines.

It is proposed that the Departmental Action Plan be developed cooperatively by our staff and associated agencies (to ensure that schedules are reasonable within the constraints of funding and staffing) under the guidance of stakeholders (who wish to see that the outline programs are initiated and/or completed in a timely manner). The first step in implementation the program is to prioritize the Action Items identified in the Plan. Each Action Item would be prioritized, schedules developed, and roles and responsibilities defined. Action Item priorities and schedules would be updated annually to reflect changes in priorities, or to respond to effects of implemented policies, changing conditions, new opportunities, and new funding sources (especially with the reauthorization of federal transportation legislation in 2003). This will ensure that the program, while focused on achieving long-term results, is flexible enough to remain a dynamic operational guide from which we can track the implementation of the Plan. The development of the Departmental Action Plan should be the first Action Item of the Plan, as it establishes the schedule and milestones for all other Plan Action Items. Progress will be monitored and reported annually in a "Departmental Action Plan Status Report", along with an annually updated Departmental Action Plan.

A critical issue in making this organizational monitoring program successful is the need to develop a realistic schedule with our input, other involved agencies, and other levels of government to ensure adequate resources are available for the timely completion of the Plan's action items.

System Monitoring

The principles, policies and actions in this Plan are intended to help shape the transportation system in Delaware, so that it better serves the people who use the system. To assess how well we are performing with regard to achieving these positive changes to the system, a set of key performance indicators will be developed and periodically measured as part of a system-wide monitoring process.

This concept of performance measuring is complicated, since the performance of the state's transportation system can be influenced by many factors that are outside the direct control of the Department. For example, factors such as economic, population, and employment growth to fuel prices and development patterns significantly impact the performance of transportation and vice versa. We have little direct control over these factors and the correlation between action and its "causal result" is not always an obvious one-to-one relationship.

However, we believe that it is important to evaluate our performance with respect to long-term planning efforts, and thus will identify measures or indicators that will serve as a "proxy" to broadly convey the state of the system and to serve as a rough gauge to the successful implementation of their actions. We are committed to involving stakeholders from a wide array of interests, and will invite various representative organizations within the state to assist in the development of the final set of LRTP performance indicators.

Another critical issue in the monitoring process will be the availability of relevant data and information. It will be necessary to balance the selection of "ideal" measures with current data availability. Though the selection of indicators should not be limited to only currently available information, there needs to be an understanding that data collection is often a costly and labor-intensive undertaking and that there will likely be limitations on our abilities in this regard. Additionally, we intend to use the development of these indicators as an opportunity to reevaluate its data collection needs, and will establish a subcommittee from the performance indicator stakeholder group to review, evaluate, and propose improvements to our current transportation and land use data collection efforts.

Efforts associated with this program are expected to entail the selection of a manageable number of system measures that reflect and track those principles and policies outlined in the LRTP. The measures for system monitoring should be oriented toward measures of effectiveness - that is, measures that reflect how well the desired outcomes outlined in the Plan are achieved. To ensure that the resultant measures are not too numerous as to be overwhelming, we intend to develop a set of fifteen or so monitored performance indicators that are:

- Comprehensive, consistent, and linked to the Plan's principles and policies
 - Meaningful, easy to understand, and technically correct
 - Outcome-, not output-oriented (focused on effectiveness)
 - Objective and transparent in their derivation
- Applicable across various modes

Examples of candidate measures that may be considered by the task force are listed in Table 7.

Table 7: Candidate Measures for System Monitoring Program

<i>Principles</i>	Candidate Performance Indicators
Development <i>"Direct our programs, services and facilities to support Livable Delaware"</i>	2 Developed Non-Agricultural Land per Capita 2 % of Land dedicated to transportation uses 2 Acres of Preserved Space
Travel Opportunities & Choices <i>"Maximize travel opportunity and choice for all Delawareans"</i>	2 % of Trips by non-motorized means 2 Average travel time for trips by region 2 Number of retail jobs within x minutes of home (retail jobs are a good proxy for shopping opportunities) 2 % of population within ½ mile of fixed route transit
Cost Effectiveness <i>"Use cost-effectiveness as one of our fundamental principles"</i>	2 Subsidy per Transit Trip, by Type 2 % of VMT traveled on roadway with "Good" or better rating 2 Cost benefit comparisons of proposed projects
Quality of Life <i>"Continue to emphasize quality of life as our foundation"</i>	2 Transportation Related Injury and Fatality Rates 2 Vehicle emissions per capita 2 Access to jobs for target communities (number of employment opportunities within X minutes for target communities) 2 Transit time from target communities to major job centers.
Economic Development and Growth <i>"Provide transportation opportunities that support economic development and growth"</i>	2 Number of extended "breakdowns" in flow on the State's freeways, by time period (e.g., month) 2 % growth in freight originating in Delaware (tonnage or \$\$) 2 average number of jobs within X minutes of home
Planning and Coordination <i>"Make planning and coordination an integral part of our activities"</i>	2 % of CTP implemented each year (\$) 2 % of Departmental Action Plan items completed

As stated previously, transportation and land use indicators are not necessarily wholly reflective of ourselves, nor will they always serve to provide clear direction to policy makers. However, indicators can be very important in identifying trends and highlighting changes in both direction and magnitude, as well as conveying a sense of whether things are "moving in the right direction".

It is anticipated that the selected set of performance indicators will remain unchanged for a period of five years to permit a consistent tracking of the time-series data. The results will be published annually in a "State of the System" report to convey this information to our decision-makers and the public in a timely manner. System performance measures would be revisited at the development of subsequent Plans to reflect changes in principles, policies, and priorities.

Plans only have value if they are implemented. With the public continuously demanding greater accountability from their public institutions, we are committed to ensuring this Plan is a product that truly guides the organization's activities. The two monitoring components outlined above can be instrumental in ensuring that this Plan and DeIDOT

are indeed effective by establishing transparent mechanisms through which the public can easily see how well the system is performing and how well we are performing in implementing the principles outlined in this transportation Plan.

Conclusion

"Planning Together, Moving Ahead" affords each of us the opportunity to shape our State's future. We all have an interest in creating a transportation system that responds to our needs. This Plan will set the stage for things as diverse as our neighborhood bike paths, the length of our commute, and enjoyment of our green and scenic countryside.

With this validation of direction for the next five years comes a promise: to strive to be more accessible, responsive and efficient; to listen to your wishes, ideas and concerns; and to commit to use this Plan as a tool to lead the Department into the future.

The actions described in the Plan will be brought to fruition through DeIDOT's Project Development Process and then prioritized for consideration for funding as part of DeIDOT's Capital Transportation Program (CTP). Once adopted and underway, the project will be monitored as part of the implementation and monitoring process described in the previous section of this document.

In another five years, we will re-examine demographic and travel trends, the progress made with this Plan, and changes in the State's overall policy direction in the case of another Plan update.

We are ready to accept the challenges of providing a transportation system that supports a strong quality of life. But it cannot be done alone. The principles, policies, and actions contained in this document were developed based on the ideas and comments of Delawareans from throughout the state. The public workshops held March 4, 5, and 6, 2002 helped to validate the vision and raise issues that were seen as essential for inclusion in this plan update.

Comments on the Plan are welcomed. Please contact:

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 Delaware Department of Transportation
 P.O. Box 778
 Dover, DE 19903
 (302) 760-2121 (telephone)
 (302) 739-2251 (fax)
 jcantalupo@mail.dot.state.de.us

Copies of the Plan are also available on DeIDOT's website at www.deldot.net. Comments on the Plan can also be submitted via this website.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
PUBLIC SERVICE COMMISSION**
Statutory Authority: 26 Delaware Code,
Section 209(a) (26 Del.C. §209(a))

IN THE MATTER OF THE |
INVESTIGATION AND) |
ADOPTION OF RULES TO | PSC REGULATION
GOVERN PAYPHONE | DOCKET NO. 12
SERVICES WITHIN THE |
STATE OF DELAWARE |
(OPENED OCTOBER 9, |
1984; REOPENED JUNE 17, |
1997; AND REOPENED |
JANUARY 29, 2002)) |

ORDER NO. 5965

AND NOW, to-wit, this 4th day of June, 2002, the Commission having received and considered the Findings and Recommendations of the Hearing Examiner, previously designated in the above-captioned matter, which was submitted after a duly publicized evidentiary hearing, and having heard from the Commission Staff, the only participant in this matter, that there are no exceptions to said Findings and Recommendations;

AND WHEREAS, based upon the recommendations of

the Hearing Examiner, the Commission has determined that the evidence of record supports approving the amendments to change: (a) Proposed Rules 4(f)(9) and 6(b) which permits all payphone providers to orally disclose the price for obtaining directory assistance from that payphone; (b) Proposed Rule 6 (c) which requires a real-time oral rate quote for a non-coin intrastate call made utilizing the assistance of an OSP; (c) Proposed Rule 3(f) and (g) which requires payphone service providers to have procedures in place to make prompt refunds to consumers and to also promptly replace, or repair, damaged or inoperable payphones; (d) Proposed Rule 2(d) and 4(a) which reflects an update by the Federal Communications Commission in the certification requirements of payphone equipment that can be connected to the public switched network; (e) changes various Rules for style, grammar, and format; and (f) to delete Rule 2(f), which is no longer needed;

Now, therefore, **IT IS ORDERED:**

1. That the Commission hereby adopts and approves in its entirety the Findings and Recommendations of the Hearing Examiner, which is attached hereto as Exhibit "A."
2. That the Commission adopts the proposed amendments described above, the exact text and citation of which are attached hereto as Exhibit "B."
3. That the Secretary shall transmit this Order, together with the exact text of the *Regulations Governing Payphone Service Providers and Providers of Operator Services for Payphones* to the Registrar of Regulations for publication on July 1, 2002.

4. That the effective date of this Order shall be the later of July 10, 2002, or ten days after the date of publication in the *Register of Regulations* of this Order and the final text of the *Regulations Governing Payphone Service Providers and Providers of Operator Services for Payphones*.

5. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair,
 Joshua M. Twilley, Vice Chair
 Joann T. Conaway, Commissioner
 Jaymes B. Lester, Commissioner
 Donald J. Puglisi, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

EXHIBIT "A"

REPORT OF THE HEARING EXAMINER

DATED: May 29, 2002, ROBERT P. HAYNES,
 HEARING EXAMINER

Robert P. Haynes, duly appointed Hearing Examiner in this Docket pursuant to 26 Del.C. §502 and 29 Del.C. Ch. 101, by Commission Order No. 5868, dated January 29, 2002, reports to the Commission as follows:

I. BACKGROUND

1. The Commission's Order No. 5868 provides an adequate description of the background of this proceeding. This reopened proceeding was assigned to this Hearing Examiner "to organize, classify, and summarize the materials submitted by persons in this matter." Order No. 5868 at 10. Further, I was to hold a duly noticed public hearing and to submit a Report summarizing the materials submitted and setting forth recommendations concerning the proposed revisions and amendments. Order No. 5868 at 11.

2. Publication of public notice of the proposed amendments and the public hearing on them occurred in the News Journal, the Delaware State News, and the Delaware Register of Regulations. In addition, notice was sent to all persons who had requested notice of the proceeding, and this consisted of the many parties who previously participated in this proceeding. The Commission established a deadline of April 10, 2002 for comments and timely petitions to intervene, but no person filed comments or intervened. A hearing was held April 24, 2002 in the Commission's Dover offices, and no one appeared at the hearing except for Connie S. McDowell, Chief of Technical Services, on behalf

of Staff.

3. The record consists of eleven pages of transcripts, including the testimony of Ms. McDowell. The present and proposed rules were set forth as Exhibits A and B, respectively, attached to Order No. 5868.

II. SUMMARY OF THE EVIDENCE

4. The only evidence is the direct testimony of Connie S. McDowell, who testified on the six areas that are the subject of the proposed amendments. She stated that the first change is to Section 4(f)9 and Section 6(b), and allows for all payphone providers to use oral disclosure of the price for directory assistance, as opposed to the current rules that require the posting of prices at the telephone. She said that Verizon in 2000 obtained a waiver from the Commission of the posting requirement, and that the proposed rule would eliminate the posting requirement for all other pay phone providers.

5. The second change that Ms. McDowell described is to Section 6(c), and it is patterned after the Federal Communications Commission ("FCC") rule whereby an oral rate quote is provided for non-calling interstate calls when an operator service provider is used. Under the proposed rule, the same rate quote procedure, as approved by the FCC, may be used for similar intrastate calls.

6. Ms. McDowell addressed the third change, which is to add proposed Section 3(f) and Section 3(g). These would require pay phone service providers to have procedures in place for making prompt refunds to consumers and to promptly repair or replace damaged or inoperable pay phones.

7. The fourth change she described is to Section 2(d) and Section 4(a) to reflect an update by the FCC in the certification of pay phone equipment that can be connected to the public switch network.

8. The fifth change Ms. McDowell noted is the deletion of Section 2(f) since it no longer applied following the Commission's 1997 amendments that eliminated the certification requirement for each pay phone location.

9. The final changes are for style, grammar, format, and renumbering.

III. DISCUSSION

10. No comments were filed in response to the public notice. Accordingly, there is no need to further discuss the Staff amendments, which were reviewed above. I find that the proposed changes are reasonable and adequately supported by substantial evidence. Therefore, I recommend that the Commission adopt them.

IV. RECOMMENDATION

11. I recommend that the proposed amendments to the Commission's regulations, as set forth in Exhibit B to Order No. 5868 a copy of which is appended to this report, be adopted.

Respectfully submitted,
Robert P. Haynes, Hearing Examiner
Dated: 6/24/02

E X H I B I T "B"

APPENDIX

REGULATIONS GOVERNING PAYPHONE SERVICE PROVIDERS AND PROVIDERS OF OPERATOR SERVICES FOR PAYPHONES

~~Regulations Governing Payphone Service Providers In Delaware~~

Section 1: Definitions

(a) ~~“Coin-operated payphone” means a payphone that requires the deposit of coins for calls other than those calls which are:~~

- ~~(1) billed to another telephone or to a calling card;~~
- ~~(2) 911 or telephone relay service calls; or~~
- ~~(3) to toll free numbers, such as 800 or 888 numbers.~~

~~(b) “Interexchange carriers” means telephone companies who provide long distance interstate and/or intrastate telephone service.~~

~~(c) “Payphone” means any telephone made available to the public on a feepercall basis, independent of any other commercial transaction, for the purpose of making telephone calls, whether the telephone is coinoperated or is activated either by calling collect or using a credit or calling card. The term “payphone” includes both instrument-implemented and central-office implemented telephones.~~

~~(d) “Payphone service provider” means a person or entity that offers payphone service as defined by Section 276 of the Telecommunications Act of 1996, Pub. L. No. 104104, 110 Stat. 56 (1996). The term includes both independent owners or operators of payphones and telecommunications carriers, including local exchange or interexchange carriers, who provide payphone service.~~

Section 2: Certification of Payphone Service Providers

~~(a) A person or entity providing intrastate payphone service shall be deemed to be a public utility under 26 Del. C. § 102(2) and shall be governed by these regulations.~~

~~(b) Except as permitted under paragraph (f) below, no person or entity shall offer payphone service in Delaware until that person or entity has received from the Commission a Certificate of Public Convenience and Necessity~~

~~(“CPCN”) to provide payphone service. One CPCN is required for each provider. Separate CPCNs are not required for each payphone.~~

~~(e) Each applicant seeking a Certificate of Public Convenience and Necessity to provide payphone service shall make application on a form prescribed by the Commission. Each applicant seeking certification to provide payphone service shall supply the following:~~

- ~~(1) the business name and address of the applicant;~~
- ~~(2) the name and address of a contact person or persons;~~
- ~~(3) the telephone and facsimile numbers and the e-mail address, if available, of the contact person;~~
- ~~(4) a description of the manner in which the applicant will assure service and equipment maintenance for the payphones, including the name, address, and telephone number of the person or entity providing such services if different from the applicant;~~
- ~~(5) a written statement affirming that the applicant has the required state and local business licenses;~~
- ~~(6) a written statement affirming that the applicant agrees to comply with all the provisions of these regulations;~~
- ~~(7) the applicant's signature and the title of the person signing the application; and~~
- ~~(8) the date of signature of the application.~~

~~(d) A person or entity installing or offering for service a payphone shall comply with the provisions of 47 C.F.R. Part 68 and any other order, rule, or regulation of the Federal Communications Commission related to telephone service offered from payphones, unless exempted from compliance by the Federal Communications Commission.~~

~~(e) If an applicant correctly completes and submits the application, has complied with the requirements of the Federal Communications Commission, and has paid the required application fee, upon execution by the Executive Director or the Chief of Technical Services, the application shall be deemed approved and shall act as a Certificate of Public Convenience and Necessity to provide payphone service within Delaware.~~

~~(f) Any person or entity providing payphone service on the effective date of these regulations pursuant to a previously granted Certificate of Public Convenience and Necessity or pursuant to other legal authority may continue to provide such payphone service. Such person or entity shall, within ninety (90) days of the effective date of these regulations, file with the Commission an application under paragraph (e) of this section and the information required by paragraph (a) of Section 3.~~

~~(g) Each certificated payphone service provider shall notify the Commission in writing within ten (10) days following the change of any information required by Sections 2(c)(1) through 2(c)(8).~~

~~(h) Each certificated payphone service provider shall~~

provide written notice to the Commission ten (10) days prior to the cessation of all operations as a payphone service provider in Delaware.

(i) The application fee for a Certificate of Public Convenience and Necessity to provide payphone service is one hundred dollars (\$100). Such application fee is waived for persons or entities filing applications under paragraph (f) of this section.

Section 3: Location Reporting

(a) At the time of the application described in paragraph (e) of Section 2, the applicant shall provide to the Commission in writing the following information for each payphone to be installed and offered in Delaware:

(1) the make, model, and identification number for the payphone;

(2) the telephone number for the payphone; and

(3) the location of the payphone, described in sufficient detail to allow the payphone to be located for purposes of mapping and inspection.

(b) If after certification, a payphone service provider installs a payphone at an additional location, relocates an existing payphone to such an extent that its previously filed location description does not allow it to be readily located for inspection purposes, or removes a payphone from an existing location, the payphone service provider shall notify the Commission in writing semi-annually, of all such new installations, relocations and removals. Such written notification shall state:

(1) the number of additional, relocated, or removed payphones by location;

(2) the telephone number for the additional, relocated, or removed payphone; and

(3) the location of the additional, relocated, or removed payphone, described in sufficient detail to allow the payphone to be located for purposes of mapping and inspection.

(c) The Commission may request the information in paragraphs (a) and (b) of this Section to be submitted in electronic format.

(d) A payphone service provider shall not install or offer a payphone where the installation or maintenance of the payphone would violate any state or local law designed to protect the health, safety, and welfare of citizens.

(e) All data provided in response to this section shall be considered proprietary information and shall not be released by the Commission; provided, however, that the Commission or its Staff may, at its discretion for good cause shown, provide for limited disclosure of necessary information relating to specific payphones in order to respond to customer complaints, law enforcement inquiries, or similar matters in the public interest.

Section 4: Payphone Equipment.

(a) All payphones shall be of a type registered with the Federal Communications Commission pursuant to 47 C.F.R. Part 68, unless such payphone has been exempted under an applicable order or ruling of the Federal Communications Commission. All payphones shall be installed in accordance with generally accepted telecommunications industry standards, applicable local codes, and the National Electrical Code and the National Electric Safety Code.

(b) All payphones shall provide, at no charge to the caller and without advance deposit of any coins:

(1) dial tone;

(2) access to 911, any other emergency number, and an operator qualified to route emergency calls;

(3) access to a number for reporting repairs or service for the payphone; and

(4) telecommunications relay service.

(c) Providers of payphone service shall provide that each payphone shall:

(1) be equipped with an audible signaling device and receive incoming calls at no charge, except that a payphone service provider may elect to bar the receipt of calls by a payphone if the provider posts notice of such restriction;

(2) except as provided in (d) and (e) of this Section, provide access to the network by a dial 0 and a dial 1 capability and/or 7digit or 10-digit dialing;

(3) permit dialing of subscriber "800" or "888" toll-free numbers without the advance deposit of coins, except those numbers that have been blocked in accordance with applicable law or regulations

(4) provide, without the advance deposit of coins, access to the caller's desired interexchange carrier or operator service provider by use of an "800," "888," or "950" access tollfree call or by use of a carrier access code; and

(5) permit calls using calling cards, collect calls, and calls billed to a third party without the advance deposit of coins and be provisioned to prohibit the billing of calling card, collect and third party calls to the payphone number, except, at the option of the payphone service provider;

(d) Payphones provided for inmates shall not be required to comply with Sections 3(b), 4(b), 4(c) or 4(f), including all subsections thereof.

(e) Coinless payphones shall not be required to provide dial 1 capability;

(f) Each payphone service provider shall post on or near the payphone, in plain view of callers:

(1) relevant emergency numbers;

(2) the rate, including the initial time increment, if any, for a local coin call;

(3) the telephone number of the payphone;

(4) the name, address, and toll-free number of the payphone service provider or presubscribed operator service provider;

(5) a free phone number for maintenance and repairs;

(6) any restrictions in making or receiving calls, and if the payphone does not accept incoming calls, a statement to that effect;

(7) the primary intrastate or intraLATA carrier and the primary interstate or interLATA carrier and tollfree telephone numbers to call for the presubscribed carriers' rate information, along with a statement that the rates for operator-assisted calls are available upon request;

(8) any other information necessary to facilitate calls, refunds or repairs;

(9) dialing instructions and the charges, if any, for directory assistance; and

(10) a statement that callers have the right to obtain access to the toll carrier of their choice and may contact their preferred carriers for information on how to access that carrier's service by use of the payphone.

(g) A payphone service provider shall change the posted information required by paragraph (f) of this Section within thirty (30) days of any such change.

(h) All coinimplemented payphones shall be equipped to accept nickels, dimes and quarters and to return coins to the caller in case the call is not answered by the called party.

(i) All payphones shall be installed and maintained in a manner to assure the privacy of use is not compromised through any type of electrical or acoustical coupling device, extension telephone, or similar instrument.

(j) All payphones, including outdoor payphones, shall comply with federal and state laws and regulations regarding accessibility by individuals with disabilities and hearing aid compatibility.

Section 5: Local Coin Call Rates

(a) Payphone service providers need not file tariffs for local coin calling rates. The rate for local coin call for a payphone location may be determined by the payphone service provider. A payphone service provider may not charge for a local coin call or for directory assistance greater than the rate posted on the payphone. A payphone service provider may not charge for an uncompleted call.

(b) The Commission reserves the right to seek to demonstrate to the FCC that there are market failures within the State that would not allow market-based rates.

Section 6: Reporting.

Each payphone service provider shall comply with the provisions of 26 Del. C. § 115.

Section 7: Violations

(a) If, after notice and an opportunity to be heard, the Commission determines that good cause exists, it shall issue an order to a payphone service provider:

(1) ~~revoking, suspending or modifying its Certificate of Public Convenience and Necessity;~~

(2) ~~imposing fines or penalties, or;~~

(3) ~~requiring reparation to a customer or affected party; or~~

(4) ~~providing for such other relief as the Commission may reasonably require.~~

(b) Good cause, pursuant to (a) above, shall include, but is not be limited to, the following actions by a payphone service provider:

(1) ~~violation of these regulations, including the information disclosure requirements;~~

(2) ~~conducting business in an unfair or deceptive manner; or~~

(3) ~~actions which result in revocation of its registration by the Federal Communications Commission.~~

Section 7: Miscellaneous

These regulations shall become effective ten (10) days after publication in the Delaware Register. The effective date shall then be noted on the rules.

EXHIBIT "B"

Regulations Governing Payphone Service Providers and Providers Of Operator Services For Payphones

Effective Date:

Section 1: Definitions

(a) **"Call splashing"** means the transfer of a telecommunications or telephone call from one provider of operator services to another such provider in such a manner that the subsequent provider is unable, or unwilling, to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of such location.

(b) **"Coin-operated payphone"** means a payphone that requires the deposit of coins for calls other than those calls which are:

(1) billed to another telephone or to a credit or calling card;

(2) "911" or "711" telephone relay service calls; or

(3) to toll-free numbers, such as 800 or 888 numbers.

(c) **"Consumer" or "payphone consumer"** means a person initiating any intrastate telephone call or telecommunications call using a payphone. For purposes of section 6(c), the term "consumer" or "payphone consumer" shall include both the person on the initiating end of such call using operator services *and*:

(1) in the context of a collect call, the person on the terminating end of the call; and

(2) in the context of a call to be billed to a third

person, the person to be billed if such person is contacted to secure billing approval prior to the completion of the call.

(d) **“Interexchange carrier”** means a telecommunications carrier which provides intrastate long distance telecommunications service.

(e) **“Operator Services”** means any intrastate telecommunications service initiated from a payphone that includes as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telecommunications through a method other than:

(1) automatic completion with billing to the payphone from which the telecommunication originated; or

(2) completion through an access code used by the consumer, with billing to an account previously established with that other carrier by the consumer.

(f) **“Payphone”** means any telephone or other telecommunications instrument made available to the public on a fee-per-call basis, independent of any other commercial transaction, for the purpose of making telephone calls or other telecommunication, whether the pay phone instrument is coin-operated or is activated either by calling collect or by using a credit or calling card. The term “payphone” includes both instrument-implemented and central-office implemented payphone instruments.

(g) **“Payphone service”** means the provision of intrastate telecommunications services as described in 47 U.S.C. § 276.

(h) **“Payphone service provider”** means a person or entity that offers payphone service as defined by 47 U.S.C. § 276(d). The term includes both independent owners or operators of payphones and telecommunications carriers, including local exchange or interexchange carriers, which provide payphones and payphone service.

(i) **“Presubscribed provider of operator services”** means the intrastate provider of operator services to which the consumer is connected when the consumer, without dialing an access code or other free number, initiates a call or other telecommunication from a payphone using a provider of operator services.

(j) **“Provider of operator services”** means any telecommunications service provider, telecommunications carrier, or public utility that provides operator services, or any other person determined by the Commission to be providing operator services.

Section 2: Certification of Payphone Service Providers

(a) Any person or entity providing intrastate payphone service shall be deemed to be a public utility under 26 Del. C. § 102(2) and shall be governed by these regulations.

(b) No person or entity shall offer payphone service in Delaware until that person or entity has received from the Commission a Certificate of Public Convenience and Necessity (“CPCN”) to provide payphone service. A single

Certificate is required for each provider. A separate Certificate is not required for each payphone.

(c) Each applicant seeking a Certificate of Public Convenience and Necessity to provide payphone service shall make application on a form prescribed by the Commission. Each applicant seeking certification to provide payphone service shall supply the following:

(1) the business name and address of the applicant;

(2) the name and address of a contact person or persons;

(3) the telephone and facsimile numbers and the e-mail address, if available, of the contact person;

(4) a description of the manner in which the applicant will assure service and equipment maintenance for the payphones, including the name, address, and telephone number of the person or entity providing such services if different from the applicant;

(5) a written statement affirming that the applicant has the required state and local business licenses;

(6) a written statement affirming that the applicant agrees to comply with all the provisions of these regulations;

(7) the applicant's signature and the title of the person signing the application; and

(8) the date of the signature of the application.

(d) If an applicant accurately completes and submits the application, is in compliance with the applicable requirements of the Federal Communications Commission, and has paid the required application fee, the application shall, upon execution by the Executive Director or Chief of Technical Services, be deemed approved and shall act as a Certificate of Public Convenience and Necessity to provide payphone service within Delaware.

(e) A person or entity installing a payphone and other related terminal equipment shall ensure that such terminal equipment is of the type that has been approved pursuant to the certification and self-certification process set forth in 47 C.F.R. Part 68, unless such equipment has been excused from compliance by the Federal Communications Commission. A person or entity installing a payphone or other related terminal equipment, and a person or entity providing payphone services, shall comply with all orders, rules, or regulations of the Federal Communications Commission related to telephone service offered from payphones, unless exempted or excused from compliance by the Federal Communications Commission.

(f) Each certificated payphone service provider shall notify the Commission in writing within ten (10) days following the change of any information required by Section 2(c)(1) through 2(c)(8).

(g) Each certificated payphone service provider shall provide written notice to the Commission at least ten (10) days prior to the cessation of all operations as a payphone service provider in Delaware.

(h) The application fee for a Certificate of Public

Convenience and Necessity to provide payphone service is one hundred dollars (\$100).

Section 3. Location Reporting and Plans for Refunds and Repairs

(a) At the time of the submission of the application described in paragraph (c) of Section 2, the applicant shall provide to the Commission the following information, in writing, for each payphone to be installed and offered in Delaware:

(1) the make, model, and identification number for the payphone;

(2) the telephone number for the payphone; and

(3) the location of the payphone, described in sufficient detail to allow the payphone to be located for purposes of mapping and inspection. A map of such locations may be provided.

(b) If after certification, a payphone service provider installs a payphone at an additional location, relocates an existing payphone to such an extent that its previously filed location description does not allow it to be readily located for inspection purposes, or removes a payphone from an existing location, the payphone service provider shall, on a semi-annual basis, notify the Commission, in writing, of all such new installations, relocations, and removals. Such written notification shall state:

(1) The number of additional, relocated, or removed payphones;

(2) the telephone number for the additional, relocated, or removed payphone; and

(3) the location of the additional, relocated, or removed payphone, described in sufficient detail to allow the payphone to be located for purposes of mapping and inspection. A map of such locations may be provided.

(c) The Commission may request the information in paragraphs (a) and (b) of this Section be submitted in electronic format.

(d) All data provided in response to this Section shall be considered proprietary information and shall not be released by the Commission. However, the Commission or its Staff may, at its discretion for good cause shown, provide for limited disclosure of necessary information related to specific payphones in order to respond to customer complaints, law enforcement inquiries, or similar matters related to the public interest.

(e) A payphone service provider shall not install or maintain, nor offer service from, a payphone where the installation or continued operation of the payphone would violate any state or local law designed to protect the health, safety, and welfare of citizens.

(f) A payphone service provider shall have established procedures for making refunds to consumers to ensure that such refunds are made promptly after receipt of a valid request.

(g) A payphone service provider shall have established procedures to respond to any notice that a payphone is out of service or in need of repair. A payphone reported, or found to be, out of service or in need of repair shall be returned to full service, repaired, or replaced in a reasonably prompt fashion.

Section 4: Payphone Equipment

(a) A payphone, and related terminal equipment, shall not be connected to the public switched network unless the payphone or other terminal equipment is of the type approved under the certification and supplier self-certification provisions of 47 C.F.R. Part 68, or has been exempted from such certification process by an order or ruling of the Federal Communications Commission. All payphones shall be installed in accordance with generally accepted telecommunications industry standards, applicable local codes, the National Electrical Code, and the National Electric Safety Code.

(b) All payphones shall provide, at no charge to the caller and without advance deposit of any coins:

(1) dial tone;

(2) access to "911" (or another appropriate emergency number) and access to an operator capable of routing calls to the relevant emergency number or agency;

(3) access to a no-cost telephone number for reporting the need for repairs or service to the payphone; and

(4) access to "711" (or other appropriate number) to access the telecommunications relay service center.

(c) All payphones shall:

(1) be equipped with an audible signaling device and be capable of receiving incoming calls at no charge, except that a payphone service provider may elect to bar the receipt of calls by a payphone if the provider posts notice of such restriction on the payphone;

(2) except as provided in (d) and (e) of this Section, provide access to the network by a dial 0 and dial 1 capability and/or 7-digit or 10-digit dialing;

(3) be hearing compatible in a manner complying with the applicable regulations of the Federal Communications Commission;

(4) permit dialing of subscriber "800," "888," or other toll-free numbers without the advance deposit of coins, except in instances where access to those numbers has been validly blocked in accordance with applicable law or regulations;

(5) provide, without the advance deposit of coins or other advance charge, access to the caller's desired interexchange carrier or provider of operator services by use of an "800," "888," or "950" access toll-free call or by use of a carrier access code; and

(6) permit calls using calling cards, collect calls, and calls billed to a third party without the advance deposit of coins and be provisioned to prohibit the billing of calling

card, collect, and third party calls to the payphone number, except at the option of the payphone service provider.

(d) Payphones provided for inmates need not comply with Sections 3(b), 4(b), 4(c), 4(f), 6(a), and 6(b) including all subsections thereof.

(e) Coin-less payphones shall not be required to provide dial 1 capability;

(f) Each payphone service provider shall post on or near the payphone, in a manner plainly visible to the payphone consumer:

(1) a listing of all relevant emergency numbers, with instructions how to call such numbers;

(2) the rate, including the initial time increment, if any, for a local coin call;

(3) the telephone number of the payphone;

(4) the name, address, and toll-free number of the payphone service provider;

(5) a free phone number to report information about maintenance and repairs to the payphone;

(6) a description of any restrictions in making or receiving calls and, if the payphone does not accept incoming calls, a statement to that effect such as "OUTGOING CALLS ONLY" or "NO INCOMING CALLS;"

(7) the name, address, and toll-free number of the prescribed provider of operator services or presubscribed interexchange carrier for the payphone. If a different provider of operator services or interexchange carrier is presubscribed for intrastate and interstate calls or for intraLATA and interLATA calls, the name, address, and toll-free number of each such provider or carrier shall be listed;

(8) any other information necessary to facilitate calls, refunds, or repairs;

(9) instructions for obtaining directory assistance from the directory assistance provider utilized by the payphone service provider and the charge, if any, for obtaining such assistance. Such charge need not be posted if the charge for directory assistance is available under the disclosure process permitted under Section 6(b);

(10) a statement that the rates for all operator-assisted calls handled by the presubscribed provider of operator services are available upon request;

(11) a statement that consumers have the right, by calling the appropriate toll-free number, to obtain access to the intrastate interexchange carrier or operator services provider of their choice and may contact their preferred carrier or provider for information on how to access that carrier's or provider's service from a payphone.

(g) A payphone service provider shall update the information required to be posted under Subsection 4(f) as soon as practicable following any change in the required information, but no later than thirty (30) days following any such change. This requirement may be satisfied by using a

temporary sticker, provided that such temporary sticker shall be replaced with a permanent posting during the next regularly scheduled maintenance visit.

(h) All coin-implemented payphones shall be equipped to accept nickels, dimes, and quarters and to return coins to the caller in case the call is not answered by the called party.

(i) All payphones shall be installed and maintained in a manner to assure that the privacy of use is not compromised through any type of electrical or acoustical coupling device, extension telephone, or similar instrument.

(j) All payphones, including payphones located in outdoor locations, shall comply with federal and state laws and regulations regarding accessibility by individuals with disabilities and shall also comply with federal and state regulations related to hearing aid compatibility.

Section 5: Local Coin Call Rates

(a) A payphone service provider need not file a tariff for its local coin calling rates. The rate for a local coin call for a payphone location may be determined by the payphone service provider. A payphone service provider may not impose a charge for a local coin call greater than the local coin rate posted on the payphone. A payphone service provider may not charge for an uncompleted local call.

(b) The Commission reserves the right to seek to demonstrate to the Federal Communications Commission that there are market failures within the State so that market-based local call rates should no longer be permitted.

Section 6. Disclosures of Charges

(a) Pursuant to Section 4(f)(2), the payphone service provider shall post the charge for a local coin call from such payphone on, or near, the payphone.

(b) The payphone service provider shall disclose the charge for obtaining directory assistance from the provider selected by the payphone service provider by either:

(1) posting the charge, if any, for such directory assistance on or near the payphone as set forth in Section 4(f)(9); or

(2) orally disclosing such charge, audibly and distinctly, at no charge to the consumer and without advance deposit of coins, prior to the delivery of the requested directory assistance information, and with the opportunity for the consumer to terminate the directory assistance request after the disclosure of the charge.

(c) Each provider of operator services offering services to a consumer shall:

(1) identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call;

(2) permit the consumer to terminate the telephone call at no charge before the call is connected;

(3) disclose immediately to the consumer, upon request and at no charge to the consumer:

(i) a quotation of its rates or charges for the call;

(ii) the methods by which such rates or charges will be collected; and

(iii) the methods by which complaints concerning such rates, charges, or collection practices will be resolved; and

(4) disclose, audibly and distinctly, to the consumer, at no charge and before connecting any intrastate non-access code operator service call, how to obtain the total cost of the call, including any payphone surcharge, or the maximum possible total cost of the call, including any payphone surcharge, before providing further oral advice to the consumer on how to proceed to make the call. The oral disclosure required here shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of operator services, by dialing no more than two digits, or by remaining on the line. As used here, the phrase "total cost" means the variable (duration-based) charges for the call and the total per call charges, exclusive of taxes, that the carrier or provider, or its billing agent, may collect from the consumer for the call.

Section 7. Providers of Operator Services

(a) A provider of operator services shall obtain and maintain a Certificate of Public Convenience and Necessity to Provide Intrastate Services under the Commission's "Rules for the Provision of Telecommunications Services." The provider of operator services shall comply with the applicable requirements in the Commission's "Rules for the Provision of Telecommunications Services."

(b) A telecommunications service provider which has elected to be governed by the Telecommunications Technology Investment Act, 26 Del. C. §§ 703-711, and which provides operator services, shall, in providing such operator services, comply with the Act and the applicable requirements in the Commission's "Rules and Regulations for Implementing the Telecommunications Technology Investment Act."

(c) A provider of operator services shall:

(1) not bill for unanswered telephone or telecommunication calls;

(2) not engage in call splashing, unless the consumer requests to be transferred to another provider of operator services, the consumer is informed prior to incurring any charges that the rates for the call may not reflect the rates from the actual originating location of the call, and the consumer then consents to be transferred; and

(3) except as provided in paragraph (c)(2) of this section, not bill for a call that does not reflect the location of the origination of the call.

(d) Upon receipt of any emergency telephone call, a provider of operator services, and any entity providing local operator services for a payphone, shall ensure immediate

connection of the call to the appropriate emergency service of the reported location of the emergency, if known, and, if not known, of the originating location of the call.

Section 8. Reporting

Each payphone service provider shall comply with the provisions of 26 Del. C. § 115.

Section 9. Violations

(a) If, after notice and an opportunity to be heard, the Commission determines that good cause exists, it may issue an order to a payphone service provider or a provider of operator services:

(1) revoking, suspending, or modifying its Certificate of Public Convenience and Necessity;

(2) imposing fines or penalties;

(3) requiring reparations to a customer or affected party; or

(4) providing for such other relief as the Commission may reasonably require.

(b) Good cause, pursuant to (a) above, shall include, but is not to be limited to, the following actions by a payphone service provider or a provider of operator services:

(1) violation of these regulations, including the information disclosure requirements;

(2) conducting business in an unfair or deceptive manner;

(3) violations of any law or regulation of the Federal Communications Commission applicable to payphones, payphone service providers, or providers of operator services; or

(4) actions which result in revocation of its registration by the Federal Communications Commission.

Section 10. Miscellaneous

These regulations, and any later amendments, shall become effective ten (10) days after publication in the Delaware Register of Regulations or at such times as the Commission may direct. The effective date of the regulations shall be noted on the cover of the regulations.

DEPARTMENT OF EDUCATION

14 DE Admin. Code

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))

**REGULATORY IMPLEMENTING ORDER
701 UNIT COUNT****I. SUMMARY OF THE EVIDENCE AND
INFORMATION SUBMITTED**

The Secretary of Education seeks to amend regulation 701 Unit Count. The amendments are necessary to clarify the language under 4.0 Programs, Situations and Program Types that Qualify For Inclusion in the Unit Count, concerning homebound students in 4.1.4, gifted and talented students in 4.1.7 and children with disabilities in 4.1.8. The new language provides more complete definitions of these categories of students. In addition, changes have been made to address concerns expressed by the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. These changes correct the language referencing children with disabilities and also correct other references in order to enhance the clarity of intent throughout the regulation. The Secretary does not consider these changes to be substantive so as to require additional public comment.

Notice of the proposed regulation was published in the News Journal on April 19, 2002 and the Delaware State News on April 20, 2002, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. FINDINGS OF FACTS

The Secretary finds that it is necessary to amend this regulation in order to better define the categories of programs, situations and program types that qualify for inclusion in the unit count and to correct the language in the regulation.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C. §122, the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 Del. C., §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. Below.

IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in

the form attached hereto as Exhibit "B", and said regulation shall be cited in the *Regulations of the Department of Education*.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C. §122, on June 19, 2002. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of June 2002.

Valerie A. Woodruff, Secretary of Education

701 Unit Count**1.0 Forms and Record Keeping**

1.1 All information submitted through the unit count process shall be on the forms provided by the Department of Education or in such other format as may be acceptable to the Department.

1.2 Each school shall maintain September enrollment records in a manner which will allow for efficient enrollment audits by the Department of Education and the State Auditor of Accounts. At the end of September, each school shall assemble a comprehensive enrollment file that contains all necessary support materials to substantiate the enrollments reported. This file shall be retained in the school for at least three years.

1.3 Records to substantiate special education students included in the enrollment count shall contain: student name, cohort age group, grade level, [~~handicapping condition~~ **eligibility category**], name of special education teachers serving the student in September, and number of hours of special education services received during the last week of school in September. Individual student case studies, evaluations, and reports of specialists do not need to be maintained as part of the September 30 enrollment file. However, individual student files may be reviewed by the Department of Education or State Auditor of Accounts to ascertain that the students reported are bonafide special education students as per Regulation 925, Children with Disabilities.

2.0 Special Situations Regarding Enrollment

2.1 All exceptions and extenuating circumstances relating to the enrollment count are addressed to the Secretary of Education and shall be received by the Secretary for consideration prior to September 30.

2.2 Students with multiple [~~handicaps disabilities~~] shall be reported in the category that corresponds to their major [~~handicapping condition~~ **eligibility category**].

2.3 Students included in the special education unit

count under the placement provisions of Transfer Student or Emergency Temporary Placement or Change of Placement shall meet the evaluation and placement requirements found in ~~the~~ regulation ~~925~~ ~~EE~~ Children with Disabilities

2.4 Students not assigned to a specific grade shall be reported in a grade appropriate for their age or their instructional level for purposes of the unit count.

3.0 Accounting for Students not in Attendance the Last Ten Days in September

3.1 For students not in attendance at school during the last 10 school days of September, the following information shall be on file to substantiate their inclusion in the enrollment count:

3.1.1 ~~Reason for absence~~ **Reason for absence, usually medical,** and date of last direct contact with student or parent.

3.1.2 Reason to believe that student will be returning to school before November 1st.

3.1.3 Districts and Charter Schools enrolling a within-state transfer student during the last ten school days of September shall notify the student's previous district of such enrollment **[no later than the last student attendance day of September]**. The notification shall be by fax with a follow-up letter to the previous district central office. The notification shall be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of withdrawal from the previous district is exempted from this notification requirement. Failure to follow the notification procedure may result in including the same student in two different district enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving district's enrollment and unit count. Copies of the fax transmittals and follow-up letters shall be on file to substantiate the student's inclusion in the receiving district's enrollment and unit count.

4.0 Programs, Situations and Program Types that Qualify for Inclusion in the Unit Count

4.1 Students in the following programs, situations and program types shall qualify for inclusion in the enrollment count:

4.1.1 Delaware Adolescent Program, Inc. (DAPI): A student enrolled in DAPI on September 30 may be counted in the home school enrollment count. ~~If enrolled the previous year in a special education program in the reporting school~~ **If the student received special education services the previous year in the reporting school**, the student may continue to be reported for the same level of special education service as was received during the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may continue to be reported as enrolled in the next

vocational course in the program series.

4.1.2 Repeating seniors who are enrolled in school for a minimum number of instructional hours defined as three traditional courses or an equivalent time in a block schedule, shall be included in the unit count provided they meet the age and residency requirements. Students in the James H. Groves In-school Credit Program (2.4 in regulation 915 James H. Groves High school) and students in the Advanced Placement Program shall be enrolled and attend at least one full credit course in their high school to be included in the unit count provided they also meet the age and residency requirements.

4.1.3 ~~Temporary medical problem,~~ **[Temporary problem, usually medical,** which precludes school attendance prior to November 1st.

4.1.4 ~~Supportive homebound instruction provided by the reporting school. Supportive Homebound Instruction Provided by the Reporting School: The school shall provide a minimum of 3 hours of supportive (home bound) instruction each week of eligibility for students with disabilities in grades K-5, and a minimum of 5 hours of supportive (home bound) instruction for students with disabilities in grades 6-12. There is no minimum when supportive (home bound) instruction is part of the transitioning process that has been documented by an IEP team as necessary for an orderly return to the educational program (14 DE. Administrative Code 900, Section 930 paragraph 3.1.1). Students who are receiving supportive (home bound) instruction are to be served by qualified (certified) individuals (Section 300.23, IDEA, Part B). Supportive Instruction (Homebound): Students receiving supportive instruction (homebound) pursuant to 14 Del. Administrative Code 930 qualify for inclusion in the unit count.~~

4.1.4.1 A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a full-time special education student if, in the child's placement immediately preceding the homebound placement, the child was receiving instruction from a certified special education teacher for at least 12 ½ hours per week.

4.1.4.2 A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a part-time special education student if, in the child's placement immediately preceding the homebound placement, the child was receiving instruction from a certified special education teacher for less than 12 ½ hours per week.]

4.1.5 Stevenson House or New Castle County Detention Center: Students on a temporary basis pending disposition of case who are expected to return to school prior to November 1st.

4.1.6 Alternative Education Program: A student

enrolled in an Alternative Program on September 30 may be counted in the home school enrollment count. ~~[If enrolled the previous year in a special education program in the reporting school]~~ **If the student received special education services the previous year in the reporting school**, the student may continue to be reported for the same level of special education service as was received the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may be reported as enrolled in the next vocational course in the program series.

4.1.7 ~~Four-year old "gifted or talented" students recorded in the grade level enrollment group to which they are assigned. Gifted or talented students [who possess certain outstanding abilities that enable them to exhibit a high degree of performance in a particular field, as defined in 14 Del. C. § 3101] beginning with the chronological age of 4 inclusive, who have been identified by professionally qualified persons (14 Del. C. Section 3101), are recorded in the grade level enrollment group to which they are assigned. These students should be evaluated using standardized assessment instruments.~~

~~[4.1.8 Persons with Disabilities in the Chronological Age Group Birth Through 20 Years, Inclusive (14 DE. Admin. Code 900, section 925, paragraph 4.1) : Persons with Disabilities are persons in the chronological age group birth through 20 years, inclusive, who because of mental, physical, emotional or learning disability problems, as defined by the Department of Education rules and regulations, require special education and related services in order to develop their capabilities. Such eligibility and the nature of the disabling condition, must be determined by an IEP/MD team.~~

~~4.1.8.1 All pre-kindergarten students with disabilities shall be counted as full-time special education students. In the case of developmentally delayed 3 year old students and speech or language delayed 3 and 4 year old students as determined by the Department of Education with the approval of the State Board of Education, services shall be provided for these students through an annual appropriations to the Department of Education specifically for that purpose (14 Del. C. Section 1703). Students identified in these categories are not included in the state unit count.~~

4.1.8 Except as provided in section 5.0 of this regulation, all pre-kindergarten children with disabilities shall be counted as full-time in the appropriate eligibility category.]

4.1.9 Students enrolled in residential facilities as of the last day of September. These students are included in the enrollment count of the district operating the instructional program in that facility. The facilities that are eligible shall be identified each year by the Department of Education.

4.1.10 Regular Programs - Regular programs include students who are enrolled in the regular elementary or secondary curriculum of the school, i.e., the core of the school subjects, which most students take.

4.1.11 Full-time Special Education ~~[Programs Services]~~ - Students who have been properly ~~[diagnosed identified, placed in a special program]~~, and receive instruction from a certified special education teacher for at least 12 1/2 hours per week ~~[Special students Children with disabilities]~~ must have appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in Regulation 925, Children with Disabilities.

4.1.12 ~~[Part-time Special Education Programs - Part-time special education programs services include students who receive less than 12 1/2 hours of instruction from a certified special education teacher, but meet all other criteria for full-time special education services. Part-time special education students, for unit computation, have their time apportioned between a regular student in a specified grade and a special student in a specified category. Part Time Special Education Services - Students who have been properly identified and receive instruction from a certified special education teacher for less than 12 1/2 hours per week. These children with disabilities must meet all other criteria for full-time special education services. For unit count computation, they will have their time apportioned between a regular student in a specified grade and a special student in a specified category.]~~

4.1.12.1 The apportioning is accomplished by dividing the number of hours that each student receives instruction from a certified special education teacher by 15. For example, ~~[if a second grade Learning Disabled student]~~ if a second grade student eligible for special education services in the Learning Disabled category] receives 11.5 hours of special education service per week, the student is counted as a .77 LD student ($11.5/15 = .77$) and a .23 second grade regular student. This accounts for one Full-Time Equivalent Student ($.77 + .23 = 1.0$).

4.1.13 Vocational Programs - A maximum of 900 minutes of vocational time per week per student shall be credited toward the vocational unit determination. Students who attend full time, 900 minute vocational programs are not counted in any other vocational course. They have the maximum time allowed.

5.0 Programs and/or Situations that Do Not Qualify for the Unit Count

5.1 Students in the following programs and situations do not qualify for inclusion in the enrollment count:

5.1.1 Students who have not attended school during the last 10 days of September

5.1.2 Students who are enrolled in General

Education Development (GED) programs

5.1.3 Students who are enrolled in other than Department of Education approved programs

5.1.4 Students who are transferred to a state residential facility during September shall not be included in the enrollment count of the District unless that District operates the facility's instructional program; otherwise the student must be treated as a withdrawal

[5.1.5 Children eligible for special education under Developmentally Delayed Three Year Old Children and Pre-School Speech Delayed 3 and 4 Year Old Children. Services will be provided for these students through an annual appropriation to the Department of Education specifically for that purpose (14 Del.C §1703).]

6.0 Nontraditional High School Schedules: For unit count purposes if a special education student or a vocational student in a school utilizing nontraditional schedules receives during the course of the year the same amount of instruction the student would have received under a traditional class schedule, the district shall average the time and calculate instructional time on a weekly basis; providing however, that a vocational student receives a minimum of 300 minutes of instruction per week and a full-time special education student receives a minimum of 7.5 hours of instruction per week.

The following exemplifies a situation with the required minimum minutes and hours for a full time vocational and/or special education student **and shows that the heavy concentration of minutes or hours could occur either in the fall or the spring of the year.]**

~~[Fall]~~ **Fall/spring** Vocational = 300 minutes per week
~~[Spring]~~ **Spring/fall** Vocational = 1500 minutes per week
 1800 / 2 = 900 minutes per week

~~[Fall]~~ **Fall/spring** Special Education = 7.5 hours per week
~~[Spring]~~ **Spring/fall** Special Education = 17.5 hours per week
 25.0 / 2 = 12.5 hours per week

7.0 Charter Schools

7.1 Charter schools shall be allowed the following options in calculating their unit count:

7.1.1 using the standard public school procedure: major fraction unit rounding rule in each category; or

7.1.2 adding the fractional units in each category and using the major fraction unit rounding rule on the total

8.0 Unit Adjustments After Audit: If, after the units are certified by the Secretary of Education, a student is disqualified through the auditing process from the unit count, the units will be recalculated without that student. An other eligible student shall not be substituted for the disqualified student. A special education student who has been identified and is receiving special education services and is disqualified from the unit count due to irregularities contained within supporting documentation, may then be included in the appropriate regular enrollment category provided the student meets eligibility requirements. Only a student disqualified by the audit process may be reassigned to another unit category. In no event can this adjustment result in a net increase in units for a district.

See 2 DE Reg. 382 (9/1/98)

See 5 De Reg. 627 (9/1/01)

**PROFESSIONAL STANDARDS BOARD
 REGULATORY IMPLEMENTING ORDER
 1512 ISSUANCE AND RENEWAL OF
 ADVANCED LICENSE**

**I. SUMMARY OF THE EVIDENCE AND
 INFORMATION SUBMITTED**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to adopt this regulation. This regulation establishes requirements for the issuance and renewal of an advanced license. This regulation shall apply to the issuance and renewal of an advanced license as established by 14 Del.C. § 1213 and § 1214.

Notice of the proposed adoption of the regulation was published in the News Journal and the Delaware State News on May 9, 2002, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is necessary to adopt this regulation because 14 Del.C. §1213 and § 1214 direct the development by the Professional Standards Board, in consultation and collaboration with the Department of Education, and with the approval of the State Board of Education, of regulation of the issuance and renewal of an advanced license. Adoption of this regulation will permit implementation of the provisions of 14 Del.C. § 1213 and § 1214.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is necessary to adopt the regulation. Therefore, pursuant to 14 Del.C. § 1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted.

IV. TEXT AND CITATION

The text of regulation 1512 shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited in the Regulations of the Department of Education.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 5th DAY OF JUNE, 2002.

Charles Michels, Chair	Mary Ellen Kotz, Vice Chair
Patricia Clements	Barbara Grogg
Michele Hazeur-Porter	Sherie Hudson
Tony Marchio	Mary Mirabeau
John Pallace	Joanne Reihm
Harold Roberts	Karen Schilling Ross
Teresa Schooley	Carol Vukelich
Jacquelyn Wilson	

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED THIS 20TH DAY OF JUNE, 2002
STATE BOARD OF EDUCATION**

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Robert Gilsdorf
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

**1512 ISSUANCE AND RENEWAL OF
ADVANCED LICENSE**

1.0 Content: This regulation shall apply to the issuance and renewal of an advanced license for educators, pursuant to 14 Del. C. § 1213 and § 1214.

2.0 Definitions: The following words and terms, when

used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Department" means the Delaware Department of Education.

"Educator" means an employee paid under 14 Del. C. § 1305.

"Exigent Circumstances" means unanticipated circumstance or circumstances beyond the educator's control, including, but not limited to serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator's temporarily leaving active service.]

"Maintenance of proficiency" means evidence of valid renewal of National Board for Professional Teaching Standards certification.

"National Board Certified Teacher" means an educator who holds National Board for Professional Teaching Standards certification.

"National Board certification" means certification of an educator by the National Board for Professional Teaching Standards.

"Standards Board" means the Professional Standards Board established pursuant to 14 Del. C., § 104.

"State" means State of Delaware.

3.0 In accordance with 14 Del.C. § 1213, the Department shall issue, upon application, an advanced license to an educator who receives National Board for Professional Teaching Standards certification. An advanced license is valid for 10 years unless extended pursuant to 14 Del.C. §1216 or revoked for cause, as defined in 14 Del.C. § 1218.

3.1 An applicant for an advanced license shall submit the approved application form to the Department. Verification of receipt of National Board certification must be included with the application. Incomplete applications will not be processed.

4.0 RESERVED (for equivalent program)

5.0 In accordance with 14 Del.C. § 1214, the Department shall renew an advanced license, valid for an additional 10 years, to an educator who has maintained proficiency through the National Board for Professional Teaching Standards. Proficiency for National Board certification shall be deemed to have been maintained if the educator provides evidence of valid renewal of National Board for Professional Teaching Standards certification.

5.1 An applicant for renewal of an advanced license shall submit the approved application form to the Department. Verification of valid renewal of National Board for Professional Teaching Standards must be included with the application. Incomplete applications will not be processed.

6.0 The Department may extend an advanced license for a period not to exceed one year, exigent circumstances warranting the necessity of such extension.

7.0 An educator may take a leave of absence of up to three years with no effect upon the validity or expiration of the advanced license.

8.0 An applicant shall disclose his or her criminal conviction history upon application for an advanced license. Failure to disclose a criminal conviction history is grounds for denial or revocation of an advanced license and criminal prosecution as specified in 14 Del. C., §1219.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF LONG TERM CARE
RESIDENTS PROTECTION**

Statutory Authority: 16 Delaware Code,
Section 1101 (16 Del. C. §1101)

**Regulations for Nursing Homes Admitting Pediatric
Residents**

Nature of the Proceedings

The Department of Health and Social Services, Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings in accordance with 29 Delaware Code, Chapter 101 to adopt the final seven regulations for Nursing Homes Admitting Pediatric Residents. On May 1, 2002, DLTCRP published the seven proposed regulations in the Register of Regulations for purposes of receiving written and oral comments at a public hearing on June 12, 2002.

No written or oral comments were received. Accordingly, the seven proposed regulations are being promulgated as final regulations.

Findings of Fact

The Department of Health and Social Services finds that the proposed regulations, as set forth in the attached copy, should be adopted as final regulations. Therefore, it is ordered that the proposed Regulations for Nursing Homes Admitting Pediatric Residents are promulgated effective July 10, 2002.

June 13, 2002, Vincent P. Meconi, Secretary

Section 79.100 - Purpose

79.101 - As set forth in 16 Del. C., Chapter 11, Section

1101:

“...the primary purpose of the licensing and regulation of nursing facilities and similar facilities is to ensure that these facilities provide a high quality of care and quality of life to their residents.”

79.102 - Given that most nursing facilities and similar facilities provide services to adults who are elderly and/or physically disabled, children with special needs housed in these facilities require unique and carefully coordinated plans of pediatric care as well as developmentally appropriate, family-friendly environments.

79.103 - These regulations outline minimum acceptable levels of care and treatment for this population.

79.104 - A facility must be in compliance with all state and local laws and regulations applicable to facility personnel, provision of services and physical plant.

Section 79.200 - Authority and Applicability

79.201 - These regulations are adopted in implementation of 16 Del. C., Chapter 11 and are applicable to any licensed nursing facility which provides care or services to one or more persons under 18 years of age.

79.202 These regulations are intended to supplement, and not supplant, general regulations promulgated in conformity with 16 Del. C., Chapter 11 and other applicable laws.

Section 79.300 - Definitions

79.301 - “Adult Resident” - any person residing in the facility 18 years of age and older.

79.302 - “Care Plan” - a specific document that includes, but is not limited to, identified resident-based goals and defined action steps for providing appropriate care and treatment.

79.303 - “Certified Nursing Assistant ” - an individual certified in accordance with 16 Del. C., Chapter 30A, under the supervision of a licensed nurse, who provides care which does not require the judgment and skills of a licensed nurse. The care may include, but is not limited to, the following: bathing, dressing, grooming, toileting, ambulating, transferring and feeding, observing and reporting the general well-being of the persons(s) to whom they are providing care.

79.304 “Department” - Department of Health and Social Services.

79.305 “Division” - Division of Long Term Care Residents Protection.

79.306 “Licensee” - the person or organization to whom a license is granted and who has full legal authority and responsibility for the governance and operation of a nursing home and/or similar facility.

79.307 “Pediatric Resident” - any person residing in a nursing facility under 18 years of age and for whom there is a care plan including medical care, treatment and other

related services.

79.308 "Primary Care Nurse (PCN)" - a Registered Nurse with at least a Bachelor's Degree in nursing with expertise in the care of children with special needs. The PCN is responsible for the day to day delivery of all services specified in the care plan.

79.309 "Primary Care Provider (PCP)" - a physician licensed to practice in the State of Delaware with expertise in the care of children with special needs designated to coordinate medical care on a day to day basis.

79.310 - "Social Worker" - an individual with a bachelor's degree in social work or in a human services field including but not limited to sociology, special education, rehabilitation counseling, and psychology. An individual with a bachelor's degree in any other related field may qualify if the individual can demonstrate competency in coordinating care for medically fragile populations either through course work or experience. A minimum of one year of supervised experience is required in a long term care setting working directly with individuals and their families.

Section 79.400 - General Requirements

79.401 - Prior to admission, an interdisciplinary team of healthcare professionals shall evaluate the potential pediatric resident to determine whether the licensee can meet the pediatric resident's needs. The care plan must contain documentation of the pre-admission assessment with approval by the primary care provider and parents/guardian with notification to the responsible state agencies.

79.402 The licensee shall admit and retain only children with special needs whose specific medical, nursing, and psychosocial needs the licensee can meet.

79.403 The licensee through licensed healthcare professionals shall ensure that an interdisciplinary team is formulated for each pediatric resident. The interdisciplinary team shall include, but not be limited to, the Primary Care Nurse, a representative from each pediatric service received by the pediatric resident, a nutritionist, a representative from the educational program, social worker, Primary Care Provider and the parents/family/guardian. The team shall meet quarterly or more frequently as needed and review and document the care plan, and the Individual Education Plan (IEP) or Individualized Family Services Plan (IFSP) formulated for the pediatric resident.

Section 79.500 - Facility Requirements

79.501- Pediatric residents shall only share rooms with other residents of the same sex.

79.502 The licensee must provide a tobacco-free environment for pediatric residents.

79.503 The licensee must provide and maintain all clinically indicated pediatric resuscitation equipment for children with special needs. For rooms occupied by such children, oxygen, suction equipment and electrical outlets

must be at each bedside with access to an emergency power system. A pediatric resuscitation cart shall be provided on each pediatric unit/wing and shall include: dosage appropriate emergency drugs, resuscitation equipment including a pediatric backboard for cardiopulmonary resuscitation (CPR), and an easily readable list of drug dosages. A defibrillator designed for pediatric use with paddle sizes appropriate for pediatric residents and an easily readable chart indicating jolt dosages must be provided on each pediatric unit/wing. Equipment must be in good working order and must be checked daily by a registered nurse for proper functioning and must be documented as such.

79.504 - A nursing staff member certified in Pediatric Advanced Life Support (PALS) shall be present in the unit where pediatric residents reside and when pediatric residents are present.

79.505 - All nurses caring for pediatric residents must be certified in infant and pediatric cardiopulmonary resuscitation (CPR).

79.506 - An audio monitoring system shall be utilized whenever a pediatric resident is left unattended. The monitoring system must include heart rate and respiratory rate alarms audible to the nursing station. Any pediatric resident with a tracheotomy and/or ventilator must also be monitored by a pulse oximetry with alarms audible to the nursing station. The monitors must be used when pediatric residents are unsupervised and/or in their rooms for quiet time and nap/bed time. A plan to answer and respond to alarms must be in place and reviewed by all facility staff members.

79.507 - The licensee through licensed healthcare professionals shall ensure that each pediatric resident is assessed by appropriate professionals for the need for assistive technology. The licensee shall ensure provision of appropriate assistive technology as prescribed as well as training in its use for staff members. Parents/family/guardian may also be trained when determined to be appropriate by the interdisciplinary team.

Section 79.600 - Medical Services

79.601 - The licensee through licensed healthcare professionals shall ensure the delivery of individualized, comprehensive services to each pediatric resident in conformity with a care plan.

79.602 - The PCN shall be the liaison among treating physicians.

79.603 - Pediatric services must be multidisciplinary and individualized. The services provided to each pediatric resident must be developmentally specific and appropriate to the age group being served.

79.604 - The licensee shall provide access to emergency medical care 24 hours a day, 7 days a week, as outlined in a written policy which is updated annually. The policy shall

be reviewed with all staff members and mock situations performed and documented at least twice a year.

79.605 The licensee through licensed healthcare professionals shall ensure complete physical assessments are performed on pediatric residents by the PCP or a Primary Care Nurse on admission/readmission and monthly thereafter. Documentation of complete physical assessment must be included in the pediatric resident's chart for review by all medical and nursing staff.

79.606 The licensee through licensed healthcare professionals shall ensure that each pediatric resident receives immunizations in accordance with current national pediatric standards.

79.607 - The licensee through licensed healthcare professionals shall ensure timely medically necessary referrals to pediatric medical sub-specialists and pediatric surgical specialists as needed.

79.608 - The licensee through licensed healthcare professionals shall ensure that each pediatric resident over the age of 3 years receives dental exams according to current national dentistry standards and necessary treatment.

79.609 - The licensee through licensed healthcare professionals shall ensure that each pediatric resident has an age-appropriate eye, hearing and vision exam according to current national pediatric standards.

Section 79.700

79.701 - The licensee shall ensure that qualified individuals specializing in the healthcare of children with special needs (e.g., physical therapist, occupational therapist, speech therapist, nutritionist, qualified interpreter) plan and administer the treatments for each pediatric resident.

79.702 - The licensee through licensed healthcare professionals shall ensure that the plan for therapy and progress toward goals is reviewed and revised at least quarterly and is incorporated into the care plan. The nature, duration, frequency, and provider of therapy services shall be specified in the care plan.

Section 79.800 - Nutritional Services

79.801 The licensee through licensed healthcare professionals shall ensure that each pediatric resident has an individually appropriate care plan that addresses the nutritional needs of that resident including the recommended daily allowance (RDA) of vitamins and minerals according to current national pediatric standards.

79.802 The licensee through licensed healthcare professionals shall ensure that infants and children are held during oral feeding as needed.

79.803 The licensee through licensed healthcare professionals shall consult with the PCP regarding the introduction of solid foods and the pediatric resident's progress in advancing to table foods.

79.804 The licensee through licensed healthcare

professionals shall ensure each pediatric resident is meeting his/her optimal developmental potential regarding eating habits/eating techniques.

79.805 The licensee through licensed healthcare professionals and support staff shall assist pediatric residents to convene in a common dining area and partake in social gatherings around meal times, including children who are fed by tube.

79.806 The licensee shall ensure proper documentation of meal intake every shift.

Section 79.900 - Nursing Services

79.901 - The licensee shall ensure that at least one registered nurse is present on every shift. That nurse must have at least one year of previous employment in a pediatric setting. This nurse may be the Primary Care Nurse (PCN).

79.902 The licensee through licensed healthcare professionals shall ensure that a sufficient number of nursing staff are assigned to the pediatric care unit to provide care in accordance with each pediatric resident's care plan and to meet each pediatric resident's needs. The licensee shall provide sufficient nursing and support staff so that each pediatric resident receives daily interaction from a variety of staff members. Interaction includes, but is not limited to, frequent conversation, play and holding/cuddling of pediatric residents to provide daily stimulation.

79.903 The licensee shall ensure that all pediatric nursing procedures are written in a policy and procedure manual. The manual must be accessible to all staff members caring for pediatric residents. Each individual policy must be reviewed and updated at least annually.

79.904 - In addition to the facility standard orientation, the licensee shall ensure that upon hiring, all pediatric nursing and support staff complete an orientation to the pediatric unit/wing which is documented in the staff members' personnel files.

79.905 - The licensee shall ensure that each nursing and support staff member providing care to pediatric residents receives training and demonstrates competence prior to performing any specialized skill or procedure on a pediatric resident. Written evidence of training and demonstration of competence must be included in each nursing and support staff member's personnel file.

79.906 - The licensee through licensed healthcare professionals and support staff shall ensure that mouth care, skin care, passive range of motion, hygiene and other dependent care activities are performed as specified in the care plan.

Section 79.1000 - Educational Services

79.1001 - The licensee in coordination with appropriate educational professionals shall ensure that each pediatric resident eligible for services under the Individuals with Disabilities Education Act (IDEA) is offered such services in conformity with 14 Del.C., Chapter 31 and 16 Del. C.,

Chapter 2, Subchapter II, and any regulations implemented under those laws.

79.1002 The licensee shall maximize the coordination of each pediatric resident's care plan with any Individual Education Plan (IEP) or Individual Family Service Plan (IFSP) to ensure consistency and promotion of the pediatric resident's optimal benefit. In implementation of this duty, the PCN and Social Worker shall collaborate with responsible schools or school districts in development and revision of care plans, IEPs, and IFSPs.

Section 79.1100 - Family Services

79.1101 - The Social Worker and other involved staff members shall promote positive family interaction and provide comprehensive instruction in providing care, as needed. The licensee shall have written guidelines for:

- family visits to the facility and flexibility in accommodating such visits,
- the pediatric resident's visits to the home setting,
- telephone contacts between the pediatric resident and the family,
- the provision of privacy between the pediatric resident and the family,
- the inclusion of the family in planning of care.

79.1102 The Social Worker and other involved staff members shall ensure that family support services are provided which include, but are not limited to, transportation, health education, counseling/support groups, home visiting, and coordination of care. The provision of quality services shall be family-based, community-based and culturally appropriate.

79.1103 The Social Worker shall provide assistance to families to obtain services including Social Security, Medicaid, and other public/private assistance programs.

79.1104 The licensee through licensed healthcare professionals shall facilitate discharge planning and coordination of outside resources. The licensee shall encourage the option of discharging the pediatric resident to the home if resources are available and the family is willing.

Section 79.1200 - Miscellaneous Services

79.1201 - The licensee shall ensure that each pediatric resident has adequate, clean, well-fitting clothing that is weather appropriate. Clothing must be used exclusively by one pediatric resident and not shared in common.

79.1202 The licensee shall ensure that each pediatric resident has individual personal hygiene items that are in proper condition for use and are not shared for use with other residents. These items include, but are not limited to, bathing soap, toothbrush, toothpaste, hair brushes/comb, and other toiletries.

79.1203 The licensee through licensed healthcare and educational professionals shall ensure that each pediatric resident engages in activities on a daily basis which directly relate to the following developmental areas:

- o neurosensory.
- o fine motor development.
- o gross motor development.
- o social/emotional.
- o speech/language/communication.
- o hearing, audiology.

79.1204 - The licensee shall ensure adequate staff to enable pediatric residents to participate in daily play activities and crafts. The licensee shall provide indoor and outdoor play and activity equipment that is appropriate for the ages and developmental levels of the pediatric residents.

79.1205 - The licensee shall provide recreational therapy for the pediatric residents which will include supervised outdoor activity and play time, weather permitting and the pediatric resident's condition permitting.

79.1206 - The licensee though the Activities Director shall ensure that appropriate alternative recreational activities are provided for pediatric residents unable to participate in group activities.

79.1207 - The licensee shall ensure that all shared play equipment is properly disinfected and that needed infection control precautions are taken.

79.1208 - The licensee shall ensure that pediatric residents are transported in accordance with current national safety standards.

79.1209 - A registered nurse must accompany pediatric residents on all school-related field trips. Portable resuscitation equipment must be supplied and accompany the pediatric residents.

Section 79.1300 - Resuscitation Orders

79.1301 - Upon admission to the facility, the PCP and PCN shall discuss with the parents/guardian of the pediatric resident procedures to follow in terms of a Do Not Resuscitate (DNR) status and shall include in the pediatric resident's chart, documentation of either DNR or Full Code status.

79.1302 - The DNR status of a pediatric resident shall not prohibit full participation by that pediatric resident in school/recreational field trips and/or events.

Section 79.1400 - Waiver

79.1401 - Waivers may be granted by the Division for good cause.

Section 79.1500 - Severability

79.1501 - Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

DIVISION OF PUBLIC HEALTH
Office of Health Facilities Licensing
and Certification
Statutory Authority: 16 Delaware Code,
Section 122(3)s1 (16 Del.C. 122(3)s1)

ORDER

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt Rules and Regulations Governing Adult Day Care Facilities. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 91, Section 9110.

On April 1, 2002, DHSS published in the Delaware Register of Regulations (Vol. 5, Issue 10) its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by May 1, 2002, or be presented at a public hearing on April 25, 2002, after which time DHSS would review information, factual evidence and public comment to the proposed regulations.

Verbal and written comments were received and evaluated. The results of that evaluation are summarized in the accompanying “Summary of Evidence.”

FINDINGS OF FACT

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware. The proposed regulations include modifications from those published in the April 1, 2002, Register of Regulations, based on comments received during the public notice period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed Rules And Regulations Governing Adult Day Care Facilities are adopted and shall become effective July 10, 2002, after publication of the final regulation in the Delaware Register of Regulations.

VINCENT P. MECONI, SECRETARY

SUMMARY OF EVIDENCE
STATE OF DELAWARE RULES AND
REGULATIONS GOVERNING ADULT DAY CARE
FACILITIES

A public hearing was held on April 25, 2002 at 1:00

p.m. in the third floor conference room, Jesse Cooper Building, Federal Street and Water Streets, Dover, Delaware 19903 before David P. Walton, Hearing Officer, to discuss the proposed Department of Health and Social Services (DHSS) Rules and Regulations Governing Adult Day Care Facilities. The announcement regarding the public hearing was advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Ms. Mary Peterson from the Office of Health Facilities Licensing and Certification (OHFLC), Division of Public Health (DPH), made the agency’s presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. Public testimony was given at the public hearing and three letters were received commenting on the proposed regulations during the comment period. Agencies providing comments and/or represented at the public hearing included:

- The State Council for Persons with Disabilities (SCPD)
- Governor's Advisory Council for Exceptional Citizens (GACEC)
- Delaware Developmental Disabilities Council
- Gull House Adult Day Care Center, Beebe Medical Center
- Riverside Adult Day Care
- Evergreen Center I & II, Christiana Care
- Easter Seals
- Gilpin Hall Adult Day Program
- Daybreak Mature Adult Care
- Laurel Senior Center

All public comments and the DHSS (Agency) responses are as follows:

- **Regulation 68.201A.1.a.iii There appears to be no due process to request review of issuance of a provisional license based on lack of compliance with the regulations. Was this an oversight?**

Agency Response: This was not an oversight. Due process is not necessary for issuance of a provisional license based on non-compliance with these regulations. However, Section 68.201B, provides for due process before the suspension or revocation of a facility's license.

- **Regulation 68.203 There is no outside period governing the frequency of Adult Day Care inspections. In contrast, nursing homes require an annual inspection in accordance with Title 16 DeL.C. Sec. 1107(a). Suggest that a sentence be added specifying inspections shall be as often as practical, but in no event less often than every 2 years.**

Agency Response: After carefully considering this comment, Section 68.203 was amended to reflect inspections of Adult Day Care facilities no less often than every 3 years.

- **Regulation 68.304 & 68.10** There is no mechanism for posting, disclosure, or distribution of rights, policies, and procedures to participants. This should be explicitly addressed.

Agency Response: Section 68.10.10 mimics 16 Del.C., Section 1121(20) by requiring that each participant to be fully informed by calling for each participant's written acknowledgement of rights, rules and regulations.

- **Regulation 68.406B** Is it acceptable to have an air conditioning system which maintains an 80-degree temperature? This is too hot!

Agency Response: When it comes to thermal comfort there are large variations, both physiologically and psychologically, from person to person, which makes it difficult to satisfy everybody in a space. The environmental conditions required for comfort are not the same for everyone. Extensive laboratory and field data have been collected which provide necessary statistical data to define conditions, which a specified percentage of occupants will find thermally comfortable. For example, to have 80 percent occupant acceptability, the Indoor Air Quality Association guidelines are 73-79 degrees (F) during the summer and 68-74.5 degrees (F) during the winter. Depending on the humidity ratio, the American Society of Heating, Refrigerating and Air-Conditioning Engineers Inc., recommends a temperature range of 67-82.5 degrees (F). Based on the above information, the 80-degree temperature was set as the upper maximum limit. The actual temperature a facility maintains, will be driven by the comfort level of the participants.

- **Regulation 68.415** Should require the facility to share any waiver request with participants and their representatives.

Agency Response: The agency agrees that if a waiver of an established standard as set forth in these regulations is requested by an Adult Day Care facility, and the waiver request could potentially impact the health, safety or welfare of the facility participants, then facility participants shall be made aware of such waiver request. Section 68.415 was amended to include notification of program participants of subject waiver request.

- **Regulation 68.803** It is unclear if a capable participant could self-administer an over-the-counter medication without violating Section

68.803H. Read broadly, Section 68.803H could prevent someone from using a hand moisturizing cream or lip balm without a doctor's order.

Agency Response: Section 68.803D clearly allows participants to self-administer medication if able. However, in some cases even over-the-counter drugs have to be ordered by a physician for the protection of the participant. Section 68.803 was amended to clarify handling of over-the-counter medications and allow participants to self-administer items such as lip balm and moisturizing cream.

- **Regulation 68.307; 68.10.8 & 68.307** It would be helpful to clarify the grievance system as it applies to a participant's discharge from a facility.

Agency Response: As a result of this comment, Section 68.307 was amended to clearly specify that a facility must develop a procedure to ensure participant's right to express concerns/complaints to the Department of Health and Social Services for any reason (including, but not limited to a participant's discharge).

- **Regulation 68.904** Authorizes a facility to have no planned activities for 35 percent of the daily operation of the program. This appears to authorize excessive "vegetating" time.

Agency Response: While there are no known standards set for Adult Day Care facility activity time, the agency thought it was necessary to have some regulated activity time established. Section 68.904 calls for planned activities for 65 percent of the time that the program is open for daily operations. Based on an 8-hour daily program this equates to 5.2 hours of planned activities and 2.8 hours of personal time. Personal time includes meals and snacks, and quiet time. The agency thinks this requirement strikes a proper balance between under- and over-stimulation of participants.

- **Regulation 68.905** Requires a facility to have an Activity Coordinator, but due to inadequate wording, could conceivably allow a facility to hire an Activity Coordinator for 1-hour per year. Additionally, there is no description whatsoever of the expected duties or role of the Coordinator.

Agency Response: Based on this comment, Section 68.905 was appropriately amended.

- **Regulation 68.10.7** Should be amended to add "mistreatment" and "financial exploitation."

Agency Response: Based on this comment, Section 68.10.7 of the regulation was amended to include mistreatment and financial exploitation.

- **Regulation 68.10.9** This section should include a statement disallowing chemical restraints and would benefit from clarification on the decision-maker for physical restraints.

Agency Response: Based on this comment, Section 68.10.9 was amended to include the disallowance of chemical restraints. Additionally, it was also amended by adding if restraint becomes necessary, the facility must comply with specific federal and state laws regarding restraint. Finally, the remainder of Section 68.10.9 was amended by the deletion of subsections A. through D.

- **Regulation 68.10.5** This section could be enhanced by inserting “greatest” before “extent possible” in subsection C. and by inserting “and choice” after “self-determination.”

Agency Response: Based on this comment, Section 68.10.5 was appropriately amended.

- **Regulation 68.14** This section contemplates inclusion of an advanced directive in the facility’s records. Power of attorney should also be added.

Agency Response: Based on this comment, Section 68.14 was amended to include a power of attorney if applicable.

- **Regulation 68.905** Other categories of Activity Coordinator qualification should be added to this section of the regulation: National Certification as an Activity Director, by The National Certification Council for Activity Professionals; and certification as a Therapeutic Recreational Therapist by the National Therapeutic Recreational Association.

Agency Response: Based on this comment, Section 68.905 was amended to include National certification as an Activity Director and National certification as a Therapeutic Recreational Therapist.

- **Regulation 68.14.1** This section requires current pictures of participants be kept on file at each facility; and that new pictures be taken at least every two years. Would like to see the new picture every two years be changed to "as needed."

Agency Response: Based on this comment, Section 68.14.1 was amended to require a facility to take photographs of participants on an as needed basis.

- **Regulation 68.607** Could the following reasons for discharge be added, "non-participation in plan of care and non-compliance with written and signed admission agreement." . . . ?

Agency Response: Based on this comment Section 68.607A was amended to clarify non-participation in the plan of care and non-compliance with written admission agreement as reasons for discharge.

- **Regulation 68.12.13** Can the training and experience required for Adult Day Care Aides/ Assistants/Technicians be relaxed to allow for on the job orientation and training of a person who does not have previous experience in a healthcare setting?

Agency Response: After researching this section and careful consideration of this comment, the agency feels the existing regulatory requirement of one year's experience in a healthcare setting is the minimum acceptable experience level for Aides/Assistants/Technicians in an Adult Day Care facility.

- **Regulation 68.904D** This section requires monthly activity calendars be posted with specific hours the activity will take place. This will make the calendar too long and not take into consideration changes based on participants' lack of interest.

Agency Response: After carefully considering this comment, the agency has concluded that the existing regulatory requirement to post a monthly activity calendar with hours should be no longer than an activity calendar without hours listed. Listing the hours of activities is especially important to participants and families of the participants.

- **Regulation 68.12.6** Request that the pre-employment physical examination required by this section of the regulation be deleted. It is not required of employees in a long-term care setting.

Agency Response: After carefully considering this comment, the existing regulatory requirement for a pre-employment physical will remain. It is imperative that the individual hired is physically and medically capable of accomplishing duties associated with the Adult Day Care

facility.

- **Regulation 68.803F.3** In this subsection of the regulation, two licensed people must count off the schedule II substances during transfer (receiving or giving back) of such substances. Because most Adult Day Care facilities have only one licensed nurse, it will be impossible to meet this regulatory requirement.

Agency Response: Based on this comment, Section 68.803.F.3, was amended to reflect counting of schedule II substances by the facility licensed staff and participant/family of the participant.

- **Regulation 68.803F.2** This subsection requires prescription medications stored in a refrigerator to be in a separate and locked container. For clarification purposes, does this mean another locked box within the refrigerator?

Agency Response: Yes that is correct. This subsection of the regulation requires "medication requiring refrigeration shall be stored in a separate and secure locked container within the refrigerator."

- **There was a general comment made about the regulations failing to use "people-first" language.**

Agency Response: The agency searched the regulation and made many non-substantive wording changes based on this comment.

In addition to changes referenced in this Summary of Evidence, minor grammatical corrections were made to the draft regulations.

The public comment period was open from April 1, 2002 to May 1, 2002.

Verifying documents are attached to the Hearing Officer's record. The Delaware Attorney General's office and the Cabinet Secretary of DHSS have approved this regulation.

STATE OF DELAWARE REGULATIONS FOR ADULT DAY CARE FACILITIES

Title 16 - Health and Safety

Part I, Chapter 1, Subchapter II, Section 122.(3).s.1.

Powers and Duties of the Department of Health and Social Services

Establish standards for regulation in the operation of

adult day care facilities, and grant licenses for the operation of such facilities to persons, associations or organizations which have been approved in accordance with this title and which pay the appropriate permit fee.

REGULATIONS

SECTION 68.0 PURPOSE

The regulations for Adult Day Care Facilities apply to any program that provides health, social, and related support services as described in these regulations for four or more functionally impaired adults who reside in the community and are in need of these services as determined by a pre-admission assessment. Adult Day Care facilities do not include programs intended exclusively or primarily to provide activities or training to ~~the developmentally disabled or mentally ill~~ persons with developmental disabilities or mental illness]. These services are provided to adults for a period of less than 12 hours during the day and are provided in a setting other than a participant's home or the residence of the facility operator.

SECTION 68.1 GLOSSARY OF TERMS

68.101 Accessible - an environment which allows an individual using a wheelchair or support appliance to enter, exit and move about freely with no assistance from another person.

68.102 Activities of Daily Living - the tasks for self-care which are performed either independently or with supervision or assistance. Activities of daily living include ambulating, transferring, grooming, bathing, dressing, eating, and toileting.

68.103 Adult - any person 18 years of age or older.

68.104 Aide/Assistant/Technician - ~~an~~ individual[s] who provide[s] care that does not require the judgment and skills of a licensed nurse. The care may include but is not limited to the following: bathing, dressing, grooming, toileting, ambulating, transferring and feeding, observing and reporting the general well-being for the person(s) to whom they are providing care.

68.105 Department - the Delaware Department of Health and Social Services.

68.106 Dietitian - a person currently registered by the Commission on Dietetic Registration of the American Dietetic Association and/or a Certified Dietitian/Nutritionist in the State of Delaware.

68.107 Functionally Impaired Adult - An adult who requires

supervision due to cognitive or physical impairment or who cannot independently perform one or more Activities of Daily Living.

68.108 Nursing Services - those procedures commonly employed in providing for the physical, emotional and rehabilitation needs of functionally impaired adults which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: irrigations; catheterization; application of dressings; supervision of special diets; objective observation of changes in participant condition as a means of determining required nursing care and the need for further medical diagnosis and treatment; special procedures contributing to rehabilitation; administration of medication and carrying out treatments prescribed by a physician or an Advanced Practice Nurse in accordance with the Rules and Regulations related to the law Regulating the Practice of Nursing in Delaware which involve a like level of complexity and skill in administration.

68.109 Participant - an individual receiving services in an adult day care facility.

68.110 Representative - a person acting on behalf of the participant under Delaware law.

SECTION 68.2 LICENSING REQUIREMENTS AND PROCEDURES

68.201 No person shall establish, conduct or maintain in this State any adult day care facility without first obtaining a license from the Department of Health and Social Services.

A. Issuance of Licenses

1. Provisional License:

a. A provisional license shall be granted, for a period of less than one year, to all agencies/facilities:

i. which have completed the application process pending an on-site survey during the first ninety (90) days of operation; or,

ii. which have experienced a change of ownership (CHOW), have completed the application process, and are pending an on-site survey during the first ninety (90) days of operation; or,

iii. which are not in substantial compliance with these rules and regulations.

b. The Department shall designate the conditions and the time period under which a provisional license is issued.

c. A provisional license may not be renewed unless a Plan for Corrective Action has been approved by the Department and implemented by the agency/facility.

2. License:

a. A license shall be granted, for a period of

one year (12 months) to all agencies/facilities which are and remain in substantial compliance with these rules and regulations.

b. A license shall be effective for a twelve-month period following date of issue and shall expire one year following such date, unless it is: modified to a provisional, suspended or revoked, or surrendered prior to the expiration date.

c. Agencies/Facilities must apply for licensure at least thirty (30) days prior to the expiration date of the license.

d. Agencies/Facilities which have not been inspected/surveyed during a licensure year may apply for and be issued a new license until an inspection/survey is completed.

e. A license may not be issued to an agency/facility which is not in substantial compliance with these regulations and/or whose deficient practices present an immediate threat to the health and safety of its patients/clients.

B. Suspension or Revocation of Licenses

The Department may suspend or revoke a license issued under this chapter for good cause, including but not limited to the following:

1. Violation of any of the provisions of these rules and regulations.

2. Deficiencies which present a threat to the health and safety of participants.

3. Permitting, aiding, or abetting the commission of any illegal act in the facility.

4. Conduct or practices detrimental to the welfare of the participant.

5. Refusal to allow the Department access to the facility to conduct surveys/investigations as deemed necessary by the Department.

Before any license issued under this chapter is suspended or revoked, the Department shall give ten (10) calendar days written notice to the holder of the license, during which he/she may appeal for a hearing before the Secretary of the Department or her/his designee.

The holder of the license may, within such 10-day period, give written notice of their desire to have a hearing. Proceedings in regard to such hearing shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, Title 29, Chapter 101 of the Delaware Code and in accordance with applicable rules and regulations of the Department.

C. Order to Suspend a License

1. The Department may immediately suspend a license upon issuance of a written suspension order if the health, safety, or well-being of the participants is in jeopardy or imminent danger. The order shall state the reason(s) for the suspension.

2. Within ten (10) working days of the issuance of

the suspension order, the Department shall hold a hearing with the licensee unless, prior to such hearing, the conditions upon which the suspension were based have been corrected and a new license issued.

D. Renewal of License after Suspension or Revocation

If and when the conditions upon which the suspension or revocation of a license are based have been corrected and after a proper inspection has been made, a new license may be granted.

E. Fees

Fees shall be in accordance with DE Code, Title 16, Part I, Chapter 1, Subchapter II, Section 122.s.2.

F. A license is not transferable from person to person or from one location to another.

G. The license shall be posted in a conspicuous place on the licensed premises.

68.202 Separate Licenses

A. Separate licenses are required for facilities maintained in separate locations, even though operated under the same management.

B. A separate license is not required for separate buildings maintained by the same management on the same grounds.

68.203 Inspection

Every adult day care facility for which a license has been issued under this chapter shall be periodically inspected by a representative of the Department. [Regular inspections shall occur at least once every three years.]

68.204 Application Process

A. All persons or entities applying for a license shall request a licensure application from the Department.

B. Applicants shall submit to the Department the following information:

1. The names, addresses and types of facility owned or managed by the applicant;

2. Identity of:

a. each officer and director of the corporation if the entity is organized as a corporation;

b. each general partner or managing member if the entity is organized as an unincorporated entity;

c. the governing body if the entity is government operated;

d. proof of not-for-profit status if claiming tax-exempt status; and

e. any officers/directors, partners, or managing members, or members of a governing body who have a financial interest of 5 percent or more in a licensee's operation or related businesses.

3. Disclosure of any officer, director, partner, employee, managing member, or member of the governing body with a felony criminal record;

4. Name of the individual (director/administrator/etc.) who is responsible for the management of the adult day care facility; and

5. Policy and procedure manuals and any other information required by the Department.

SECTION 68.3 GENERAL REQUIREMENTS

68.301 The adult day care provider shall neither knowingly admit, nor continue to care for, participants whose needs cannot be met by the program.

68.302 All records maintained by the adult day care facility shall at all times be open to inspection by the authorized representatives of the Department.

68.303 No policies shall be adopted by the adult day care facility which are in conflict with these regulations.

68.304 The adult day care facility shall establish written policies regarding the rights and responsibilities of participants, and these policies and procedures shall be made available to authorized representatives of the Department.

68.305 The adult day care facility shall establish policies and procedures that address the handling and documentation of incidents, accidents, medical emergencies and the prevention of wandering away from safe areas by **[cognitively impaired]** participants **[with cognitive disabilities]**. Reports of these events shall be kept on file at the facility.

68.306 Emergency telephone numbers for each participant shall be available to staff at all times.

68.307 A procedure, approved by the Department, **[and including the participants and families right to report concerns/complaints to the Department of Health and Social Services]** shall be established to enable participants and their families or representatives, if any, to have their concerns addressed without fear of reprisal.

68.308 The adult day care facility shall advise the Department in writing within fifteen (15) days following any change in the designation of the director/administrator of the facility.

SECTION 68.4 PLANT, EQUIPMENT AND PHYSICAL ENVIRONMENT

68.401 Construction

A. Minimum construction requirements are set forth herein.

B. All construction, new/renovations/remodeling, must conform to the design and construction standards recognized

by the Department.

C. In the event that there is a conflict between the design and construction standard utilized by the Department and the minimum standard set forth herein, the higher standard or requirement shall prevail.

D. When a facility is classified under this law or regulation and plans to construct, extensively remodel or convert any buildings, one (1) copy of properly prepared plans and specifications for the entire facility shall be submitted to the Department.

E. An approval, in writing, shall be obtained from the Department before construction/renovation/remodeling work is begun.

F. Upon completion of construction/renovation/remodeling, in accordance with the plans and specifications, the Department will inspect and approve the site prior to occupancy/use by the agency/facility.

68.402 Site Provisions

Each adult day care facility shall be located on a site which is approved in advance and considered suitable by the Department. Site must be safe, easily drained, must be suitable for disposal of sewage and furnishing a potable water supply.

68.403 The adult day care facility shall comply with all local and state building codes and ordinances as pertain to this occupancy.

68.404 Building

A. All facilities shall either be at grade level or shall be equipped with ramps or elevators to allow easy access for persons with disabilities.

B. The building shall be so constructed and maintained to prevent the entrance or existence of rodents and insects at all times. All exterior openings used for ventilation shall be effectively screened. Screen doors shall open outward and shall be equipped with self-closing devices.

C. The roof, exterior walls, doors, skylights and windows shall be weather tight and watertight and shall be kept in sound condition and good repair.

D. The exterior of the site shall be free from hazards and also from the accumulation of waste materials, obsolete and unnecessary articles, tin cans, rubbish, and other litter.

E. Floor and wall surfaces of bathrooms and kitchens shall be constructed and maintained to be impervious to water and to permit the floor and walls to be easily kept in a clean condition.

F. The adult day care facility must be accessible as defined at Section 68.101. The entrance and circulation areas shall meet appropriate American National Standards Institute (A.N.S.I.) standards and all applicable State and Federal standards.

G. Each adult day care facility, when located in a

facility housing other services, shall have its own separate identifiable space.

H. Outdoor recreation and/or relaxation area for participants, if provided, shall be safe, secure, free of accident hazards, accessible to indoor areas and accessible to those with disabilities. Outdoor areas shall have a fence or landscaping to create a boundary which prevents participants from wandering away and shall be easily supervised.

68.405 Water Supply and Sewage Disposal

A. The plumbing shall meet the requirements of all municipal or county codes. Where there are no local codes, the provisions of the Department Sanitary Plumbing Code shall prevail.

B. The water supply and the sewage disposal system shall be approved by the Department and the Department of Natural Resources and Environmental Control respectively.

C. The water system shall be designed to supply adequate hot and cold water, under pressure, at all times.

D. Hot water at shower, bathing and hand washing facilities shall not exceed 110°F (43°C).

68.406 Heating, Ventilation and Air Conditioning

A. The heating equipment for all areas shall be adequate, safe, protected, and easily controlled. It shall be capable of maintaining the temperature in each room used by participants between 70°F and 80°F. Portable heating devices shall not be used.

B. The adult day care facility shall be adequately ventilated. Air conditioning equipment shall be adequate and capable of maintaining the temperature in each room used by participants between 70°F and 80°F.

68.407 Lighting

Each room shall be suitably lighted at all times for maximum safety, comfort, sanitation and efficiency of operation particularly in areas that present safety hazards. Careful attention shall be given to avoid glare.

68.408 Safety Equipment

A. To prevent slipping, staircases shall have stair treads and sturdy handrails.

B. Stairways, ramps and porches shall have adequate lighting and handrails.

C. Hallways shall have handrails located on at least one side.

D. Floor surfaces, especially in heavy traffic areas shall be durable, yet non-abrasive and slip-resistant. Area rugs on hard finished floors shall have a non-skid backing. Carpeting shall be maintained in a clean and slip-resistant condition.

68.409 Bathrooms and Hand Washing Facilities

A. At least one (1) window or mechanical ventilation to

the outside shall be provided in each bathroom. Floors shall not be slippery.

B. Bathroom design shall be accessible as defined at Section 68.101 and meet appropriate American National Standards Institute (A.N.S.I.) Standards.

C. Toilets, bathing and toileting appliances shall be equipped for use by participants with multiple disabilities.

D. There shall be at least one toilet of appropriate size for every twelve participants.

1. Each toilet shall be equipped with a toilet seat.

2. Toilet tissue shall be readily accessible at each toilet.

E. There shall be at least one hand-washing sink for every two toilets. The sink(s) shall be proximate to the toilets. Hand washing facilities shall be readily accessible to participants and staff.

F. Shower and tub areas, if provided, shall be equipped with grab bars and slip-resistant surfaces.

G. Bathroom areas shall be equipped with mirrors for personal grooming. Mirrors shall be installed in such a way to minimize the danger of breakage.

H. Soap, paper towels and a trash receptacle(s) shall be provided at all times and shall be within reach of the participants.

I. Signaling devices shall be installed or placed in the bathroom areas, restroom stalls, and showers, if any.

68.410 Program Area

A. When a multi-purpose room is used, it shall have sufficient space to accommodate all activities and to prevent interference with each other. There shall be sufficient space to permit privacy and confidentiality.

B. Square Footage

1. Minimum space requirements are as follows:

a. 100 square feet for each of the first five participants; and

b. 60 square feet for each of the participants thereafter.

2. Space requirements do not include office space, bathrooms, storage, examination room, or dining room (unless the dining room is also used for activities).

C. A telephone shall be available to participants to make and receive calls. Telephones shall be in an area which affords privacy during use.

D. The adult day care facility shall maintain comfortable sound levels. Background noise shall be minimized and sound transmission shall be controlled. Sound transmission may be controlled by use of acoustical ceiling surfaces, partitions between activity areas, and separation of noisy rooms. Sound levels shall enhance privacy and encourage interaction when social participation is desired.

E. There shall be adequate storage space for program supplies and for participants' outer garments and possessions.

F. The dining area shall be large enough to provide table and chair space to accommodate all participants.

G. The adult day care facility shall provide a separate rest area to permit privacy for assessments and to isolate participants who become ill. A bed, cot or other appropriate lounging or reclining furniture shall be available for participants in this area.

H. Adult day care facilities which provide rehabilitation services shall have separate additional space and equipment for carrying out each type of therapy that may be provided. At a minimum, the following shall be provided:

1. Provisions for wheelchair participants;

2. Additional storage for supplies and equipment;

3. Provisions for participant privacy; and

4. Hand washing facilities within the rehabilitation area.

68.411 Furnishings

A. Furniture shall be sturdy and secure so that it cannot easily tip when used for support while walking or seating. Furniture shall be scaled so that it is easily used by persons with limited agility and shall permit feet to rest on the floor. Chairs used for dining shall have armrests or be free of armrests in accordance with each participant's physical needs and preferences.

B. All rugs and floor coverings shall be tacked down securely. Any mat used at a doorway shall be non-slip with edges that do not cause a tripping hazard.

C. All equipment and furnishings shall be in good condition and safe for usage by participants and staff. The adult day care facility shall provide:

1. One chair for each participant and staff person;

2. Adequate table space for all participants; and

3. Reclining lounge chairs, the number to be determined by the needs and numbers of participants.

68.412 Emergency Equipment and Supplies

The adult day care facility shall provide adequate emergency equipment and supplies readily available for treating shock, burns and wounds, including:

A. First aid kit containing sterile gauze dressings and bandages, antiseptic, tape and scissors;

B. Thermometers; and,

C. Sphygmomanometers and stethoscopes.

Special equipment as needed by the participant (i.e. suction equipment, oxygen, etc.) may be supplied by the adult day care facility or the participant.

68.413 Sanitation and Housekeeping

A. All rooms and every part of the building shall be kept clean, orderly and free of offensive odors.

B. Policy manuals shall be prepared and followed which outline maintenance and cleaning procedures, safe storage of cleaning materials and pesticides and other potentially toxic

materials, and safe storage and handling of soiled linen and clothing.

C. A ventilated janitor's closet shall contain a service sink and provide for the locked safe storage and use of housekeeping items.

D. Chemicals and disinfection agents shall be stored separate from participant care items and food.

68.414 Existing Facilities

Adult day care facilities that have been in operation before the adoption of these regulations and do not meet the minimum square footage, dining area and bathroom ratio requirements set forth in Section 68.4 must be brought into full compliance within a five (5) year period. All other provisions of these regulations apply upon their adoption except as otherwise expressly provided.

68.415 Waiver of Requirements

Waiver of a standard requires Department approval. Waiver requests must be made in writing, include the full justification behind the request and address issues of safety and infection control. They are an exception to established standards and will only be approved for compelling reason.

[A. Waiver requests which could potentially impact the health, safety or welfare of the participants must be shared with the participants and their representatives prior to submission of the waiver request to the Department.

1. Participants must be informed that they may voice their objections to any waiver request by contacting the Department.]

SECTION 68.5 FIRE SAFETY

68.501 Fire safety in adult day care facilities shall comply with the adopted rules and regulations of the State Fire Prevention Commission. Enforcement of Fire Regulations is the responsibility of the State Fire Prevention Commission. All applications for a license or renewal of a license must include, with the application, a letter certifying compliance by the Fire Marshal having jurisdiction. Notification of noncompliance with the Rules and Regulations of the State Fire Prevention Commission shall be grounds for revocation of a license.

68.502 The adult day care facility shall have a minimum of two (2) exits remote from each other which shall be clearly marked.

68.503 Staff and participants shall be trained in executing the evacuation plan. A written record of fire safety training, including content of the training and persons attending shall be maintained.

68.504 Evacuation fire drills shall be held and documented at least quarterly for all staff and participants.

SECTION 68.6 ADMISSION AGREEMENT, ASSESSMENT AND DISCHARGE

68.601 The adult day care facility shall have written admission policies which describe admission and discharge criteria.

68.602 The admission policies shall be discussed with each participant entering the program, and their representative, if any.

68.603 The adult day care facility shall only admit those individuals whose needs can be met by the facility.

68.604 All participants shall be 18 years of age or older and functionally impaired as defined at Section 68.107.

68.605 There shall be a written agreement between the participant and the adult day care program. The agreement shall:

A. Specify the services to be provided by the facility, scheduled days, financial arrangements, transportation agreements, emergency procedures and conditions for dismissal or discharge and appeal;

B. Be signed by the participant, if he is able, and representative, if any, and the adult day care facility;

C. Be given to the participant and representative, if any, and a copy shall be kept at the facility; and

D. Be reviewed and updated as necessary to reflect the change in the services or the financial arrangements.

68.606 Assessment

A. The facility shall be responsible for conducting a written assessment of an applicant within 30 days prior to admission. The assessment shall include input as required from physicians, licensed nurses, social workers, physical and occupational therapists, and other personnel with expertise as required by the participant's needs.

B. The assessment shall be completed by the adult day care facility in conjunction with the participant and her/his representative, if any.

C. The assessment shall include at a minimum a description of the participant's:

1. Physical condition, including ability to perform activities of daily living, such as ambulating, eating, toileting, and sensory limitations such as sight, hearing, and speech completed by a licensed nurse;

2. Social situation, including living arrangements and the availability of family and community support; and,

3. Mental status, including any cognitive impairment and known psychiatric, emotional, and

behavioral problems.

D. The initial assessment shall be reviewed and updated on a scheduled basis, but at least annually. This reassessment shall become a permanent part of the participant's record.

E. A reassessment shall be conducted when the needs of the participant change which indicate a revision to the plan of care is needed.

68.607 Discharge

A. No participant shall be discharged from an adult day care facility except for the following:

1. ~~[When T h]~~he participant's needs can no longer be met by the program of care;

2. ~~For M m~~edical reasons;

3. ~~[Non-participation in the plan of care or non-compliance with the written admission agreement;]~~

~~[4. For T t]~~ he participant's own welfare or the welfare of the other participants; or

~~[4. 5. For N n]~~onpayment of justified charges.

B. The participant and her/his representative, if any, shall be informed of and participate in discharge planning. A minimum of 2 weeks notice shall be given by the adult day care facility to the participant and representative, if any. However, the notice period may be waived if the care needs of the participant undergo a sudden change which necessitates immediate transfer to a facility or program able to provide a higher level of care. If the notice provisions are waived, the facility shall be responsible for assisting in suitable placement for the participant.

C. The adult day care facility shall develop a written plan of discharge which outlines the services needed by the participant upon discharge.

SECTION 68.7 PLAN OF CARE

68.701 Prior to admission, a preliminary written plan of care, based upon the initial assessment shall be developed for each participant.

68.702 A written individual plan of care shall be developed within thirty (30) calendar days of the participant's first day in the program. The plan shall be based on a functional assessment and information obtained from the participant, participant's family, physician, and the referring agency (if appropriate).

68.703 The plan shall be developed to improve or maintain the functional capabilities of the participant. The plan shall include:

A. A description of the participant's needs;

B. The activities, programming and services in which the person will participate in order to meet those needs; and

C. Realistic goals for the participant, designated roles of

the responsible parties, and if appropriate, the timeline for each goal.

68.704 The written plan of care and personal information shall be revised as frequently as warranted by the participant's condition, but shall be reviewed at least every six (6) months with the participant and representative, if any, and updated on an annual basis. All revisions to the plan of care shall be in writing.

SECTION 68.8 SUPPORT SERVICES

68.801 Aide/Assistant/Technician as defined at Section 68.104 or licensed nurses shall provide supervision and assistance in activities of daily living, such as feeding and toileting, to participants who require those services. Facilities that have been in operation before the adoption of these regulations shall comply with this requirement within 12 months of the adoption date of the regulations.

68.802 Rehabilitation services, including occupational therapy, physical therapy, and speech therapy, if provided, shall be ordered by the participant's physician and be performed by qualified therapists or therapy aides under supervision of a qualified therapist.

68.803 Medication Management

A. Medication shall not be administered to a participant unless prescribed by a licensed practitioner with independent prescriptive authority as provided by Delaware Code.

B. All adult day care programs shall have an up-to-date drug reference manual/compendium which lists drug actions, interactions, and side effects.

C. All medication administered to participants shall be ordered in writing, dated and signed by the attending physician. All prescription medications shall be properly labeled in accordance with DE Code, Title 24, Chapter 25, Subchapter III, §2536. The label shall contain the following information:

1. The prescription number;

2. The date such drugs were originally dispensed to the participant;

3. The participant's full name;

4. The brand or established name and strength of the drug to the extent that it can be measured;

5. The physician's directions as found on the prescription;

6. The physician's name;

7. The name and address of the dispensing pharmacy or physician.

D. Medications may be self-administered or administered in accordance with all State and Federal laws, including the State of Delaware Nurse Practice Act. Those participants who, upon admission, are incapable of self-

administration or who become incapable of self-administration shall have their medications administered according to the Nurse Practice Act.

E. The adult day care facility shall maintain a record of all medication provided to a participant indicating time of day, type of medication, dose, route of self-administration/administration, by whom given and any reactions noted.

F. Medication Storage

If medications are administered on site, provisions for the locked storage of medications shall be provided. The key to the medication storage must be in the possession of or accessible only to authorized licensed personnel responsible for the distribution for self-administration/administration of medications.

1. Prescription medication not requiring refrigeration shall be kept in the original container stored in a locked cabinet or drawer, and clearly labeled for the specific participant. These medications shall be stored within the U.S.P. recommended temperature range of 59° - 86°F unless the manufacturer's labeling states otherwise.

2. Prescription medication requiring refrigeration shall be stored in a separate and secured locked container within the refrigerator. The temperature must be maintained within the U.S.P. recommended range of 36° - 46°F.

[3. For the safety and welfare of all participants, medication to be self-administered shall be stored as noted and distributed to the participant as requested.]

[4-3]. Schedule II substances/prescriptions shall be kept in separately locked, securely fixed boxes (approved under Delaware law and standards) or drawers in the secure locked medication cabinet. Medication cabinets utilized will have a 2-lock system.

Schedule II substances shall be handled in the manner outlined by the State and Federal laws and regulations.

[a. Schedule II substances brought to the facility by the participant/family on a daily basis shall be counted with the participant/family when received in the facility and shall be counted with the participant/family before removed from the facility.

b. Schedule II substances brought to the facility and remaining in the facility shall be counted with the participant/family when received in the facility and the empty container shall be returned to the participant/family for disposition.]

[c.] All unused Schedule II substances shall be returned to the participant or representative for disposition.

The adult day care facility must develop policies to prevent possible diversion of controlled substances.

[5 4]. Internal medications shall be stored separately from external medications.

G. The adult day care facility shall ensure that

prescription medication is not used by other than the participant for whom the medication was prescribed.

[H. The adult day care facility shall develop policies to permit those participants who are able to self-administer medication to keep and use such over-the-counter products as cough drops, lip balm and skin moisturizer.]

[I H]. The center may maintain a supply of over-the-counter medications, such as antacids and aspirin. However, over-the-counter medications shall only be administered upon the order of the participant's physician.

[J H]. Used needles and syringes shall not be recapped, but placed immediately after use into an approved and secured Sharps container and disposed of properly.

68.804 Transportation Services

When transportation services are provided directly or under contract by the adult day care facility:

A. The vehicle shall be accessible and appropriate to the participants using it, considering any physical ~~handicaps~~ disabilities] and impairments.

B. Every participant shall have a seat in the vehicle, except those participants who remain in their wheelchairs.

C. Wheelchairs shall be secured when the vehicle is in motion.

D. Each participant shall be seated while the vehicle is in motion.

E. Vehicles shall have adequate seat belt and securement devices for ambulatory and wheelchair bound passengers.

F. Participants shall not be left unsupervised (must always be within eyesight of the driver/attendant) while in a vehicle.

G. Assistance by a driver or attendant shall be provided from the ground floor of the passenger's residence to the ground floor of the day care facility.

H. The driver shall have a valid and appropriate Delaware driver's license. The driver shall meet any state requirements for licensure or certification for the vehicle operated.

I. Each vehicle shall have a first aid kit, along with fire extinguisher and safety triangles.

J. The driver or attendant shall be trained in first aid procedures which include but are not necessarily limited to the following:

1. Cardiopulmonary Resuscitation (CPR);

2. Care during a seizure;

3. Care of minor scrapes and abrasions; and,

4. Summoning help in the event of an emergency.

K. The driver or attendant shall have medical and emergency information in the vehicle for participants being transported.

L. All transportation vehicles shall be equipped with a device for two-way communication.

68.805 Nutrition and Food ServicesA. Kitchen and Food Storage Areas

If meals are prepared by the adult day care facility the State of Delaware Food Code shall apply.

B. The adult day care facility shall assure the availability of meals and supplemental snacks in accordance with each participant's individual plan of care.

C. The adult day care facility shall provide or make arrangements for a minimum of one meal daily which is of suitable quality and quantity for participants who are in the center for four (4) or more hours. The meal shall meet at least one-third (1/3) of an adult's current recommended dietary allowance (RDA) of the Food and Nutrition Board, National Academy of Sciences-National Research Council.

D. A morning snack shall be offered daily to participants. Those participants remaining in the facility for more than 3 hours after completion of lunch shall be offered a mid-afternoon snack. Facilities open in the evening shall serve an evening meal. Evening meals shall be served approximately 4 hours after completion of lunch, but no later than 7 p.m. Beverages shall be available to participants at all times and shall be offered periodically to promote good hydration. Snacks shall have nutritional value.

E. Food shall be stored, prepared, served, or any combination of these on site in accordance with the State of Delaware Food Code.

F. Food that is prepared for the adult day facility at an alternate site shall be prepared in a facility which is in compliance with the State of Delaware Food Code and has been issued a permit.

G. Menus shall be planned and written for a minimum of a two-week cycle, if meals are prepared on-site, and approved by a dietitian.

H. The menu shall be dated for the week of service and posted in a prominent area for the availability to the participant and representative, if any.

I. A therapeutic diet shall be provided for a participant when prescribed in writing by a physician. Therapeutic diet menus shall be prepared by a dietitian.

J. A dietitian shall be available for consultation with staff on basic and special nutritional needs and proper food handling techniques and shall provide in-service training to staff on these topics at least annually.

K. Appropriate food containers and utensils shall be available as needed for use by ~~handicapped~~ disabled participants.

L. Equipment for adequate refrigeration to maintain foods at 40°F and for the heating of foods shall be provided if needed to assist in the provision of meals and snacks.

M. Drinking water shall be easily accessible to the participants and provided by either an angle jet drinking fountain with mouth guard or by a running water supply with individual service drinking cups.

68.806 Nursing Services

Nursing services may be provided by the adult day care facility in accordance with the Delaware Nurse Practice Act and shall meet the needs of the participants.

SECTION 68.9 ACTIVITIES

68.901 Each facility licensed under these regulations shall provide appropriate programming for each participant. Programming shall take into consideration individual differences in age, health status, sensory deficits, lifestyle, ethnicity, religious affiliation, values, experiences, needs, interests, abilities, and skills by providing opportunities for a variety of types and levels of involvement.

68.902 Activities shall be planned to support the plans of care for the participants, and shall be consistent with the program statement and the admission policies.

68.903 Activities shall be planned and shall include:

A. Group activities for all participants; and

B. Personalized options for individuals with varying interests and needs.

68.904 Activity Schedule

A. The adult day care program shall provide planned activities during at least sixty-five percent (65%) of the time that the program is open for daily operations.

B. A written schedule of activities shall be developed at least monthly.

C. Changes in activities shall be noted on the schedule.

D. The current month's schedule of activities shall be posted in a conspicuous place and made available to participants and their representatives, where applicable, including the name or type, date and hour of the activity.

E. The schedule of activities for the past twelve months shall be maintained by the adult day care facility.

68.905 Activities Coordinator

There shall be an Activities Coordinator who shall have either:

A. A Bachelor's Degree plus one year of experience (full-time or equivalent) in developing and conducting activities for the population to be served; or

B. An Associates Degree in a related field plus two years of appropriate experience; or

[C. National Certification as an activity or therapeutic recreational professional plus two years of appropriate experience.]

~~C. D.] A high school diploma or equivalent plus three years of experience in developing and conducting activities for the population to be served in the program.~~

Existing facilities shall have 12 months from the adoption of these regulations to comply with this

requirement.

~~[The Activities Coordinator need not be assigned on a full time basis.]~~

68.906 Equipment and Supplies

A. The facility shall provide equipment to encourage active participation and group interaction and materials shall be geared to the interests and backgrounds of the participants.

B. Environmental aids and supplies for activities shall be provided as required by the participants' needs and the goals of the program.

SECTION 68.10 RIGHTS OF PARTICIPANTS

68.10.1 Each participant shall be treated as an adult, with respect and dignity.

68.10.2 Each participant shall have the right to participate in a program of services and activities which promotes positive attitudes regarding one's usefulness and capabilities.

68.10.3 Each participant shall have the right to participate in a program of services designed to encourage learning, growth and awareness of constructive ways to develop one's interests and talents.

68.10.4 Each participant shall have the right to be encouraged and supported in maintaining one's independence to the extent that conditions and circumstances permit, and to be involved in a program of services designed to promote personal independence.

68.10.5 Each participant shall have the right to self-determination **[and choice]** within the adult day care setting, including the opportunity to:

A. Participate in developing one's plan for services;

B. Decide whether or not to participate in any given activity; and

C. Be involved, to the **[greatest]** extent possible, in program planning and operation.

68.10.6 Each participant shall have the right to privacy and confidentiality.

68.10.7 Each participant shall have the right to be protected from abuse, neglect, **[mistreatment, financial exploitation,]** solicitation and harassment.

68.10.8 Each participant shall have the right to voice grievances without discrimination or reprisal.

68.10.9 Each participant shall have the right to be free from physical **[and chemical]** restraints. **[When a restraint**

becomes necessary, the facility must comply with federal law 42 CFR 482.13 and 42 CFR 483.13 and state law (DE Code, Title 16, Part II, Chapter 11, Subchapter II, 1121).]

~~[A. Physical restraint is defined as any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body.~~

~~B. Physical restraint may not be imposed for the purposes of discipline or convenience. They are used only when necessary to treat a resident's medical symptoms.~~

~~C. The decision to use a restraint is driven not by diagnosis, but by comprehensive individual assessment (including but not limited to the participant's strengths, weaknesses, the environment, how the restraint benefits the participant, and whether a less restrictive device/intervention could offer the same benefit at less risk) that concludes that for this participant at this time, the use of less intrusive measures pose a greater risk than the risk of using a restraint.~~

~~D. A voluntary mechanical support used to achieve proper body position, balance, or alignment so as to allow greater freedom of mobility than would be possible without the use of such a mechanical support is not considered a restraint.]~~

68.10.10 Each participant shall have the right to be fully informed, as evidenced by the participant's written acknowledgment of these rights, and of all rules and regulations regarding participant conduct and responsibilities.

68.10.11 Each participant shall have the right to be fully informed, at the time of acceptance into the program, of services and activities available and related charges.

SECTION 68.11 STAFFING

68.11.1 There shall be at least two adult day care facility staff on duty at all times when participants are present. If separate sections are established within each facility, each separate section shall independently comply with the staffing requirements of this section. The minimum staffing requirements shall not include volunteers or employees who have not yet completed the required orientation program.

68.11.2 For facilities with more than sixteen (16) participants there shall be a minimum of one adult staff person on duty for each eight participants (1:8). Facilities may not use rounding in determining staffing requirements, i.e., for 17-24 participants at least 3 staff members would be required, for 25-32 participants at least 4 staff members, etc.

A. As the number or acuity of participants with functional and cognitive impairments increase the staff-participant ratio shall be adjusted accordingly to meet the needs of the participants.

B. Supervision of each participant shall be based upon the comprehensive assessment of the individual's needs.

68.11.3 Programs serving mainly participants [~~who are severely cognitively or severely physically impaired~~ with severe cognitive or physical disabilities] shall have a staff-participant ratio of at least one to four (1:4) for all severely [~~impaired~~ disabled] participants.

68.11.4 There shall be at least one RN or LPN on the premises at all times, when participants are present, for those facilities serving participants requiring nursing services as defined at 68.108.

68.11.5 There shall be at least one employee on the premises at all times, when participants are present, who is certified in cardiovascular pulmonary resuscitation (CPR).

68.11.6 The individual (director/administrator/etc.) or designee responsible for the management of the adult day care program shall be present and in charge during all hours that participants are on the premises.

SECTION 68.12 PERSONNEL/ADMINISTRATIVE

68.12.1 Adult day care providers must comply with the special employment practices relating to health care and child care facilities (DE Code, Title 19, Part I, Chapter 7, §708 and DE Code, Title 11, Part V, Chapter 85, Subchapter V, §8563) and adult abuse registry check (DE Code, Title 11, Part V, Chapter 85, Subchapter V, §8564) and the regulations promulgated by the Department of Labor regarding same.

68.12.2 No employee shall be less than 18 years of age and no person shall be employed who has been convicted of a crime where the victim was a person regardless of whether the crime was a felony or a misdemeanor.

68.12.3 The facility shall have written personnel policies and procedures that adequately support sound care and services to participants.

68.12.4 Personnel records of each employee shall be kept current and available upon request by the Department's representatives and shall contain sufficient information to support placement in the positions to which assigned.

68.12.5 Minimum requirements for pre-employment and annual tuberculosis (TB) testing are those currently

recommended by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

A. No person, including volunteers, found to have active tuberculosis in an infectious stage shall be permitted to give care or service to participants.

B. Any person having a positive skin test but a negative X-ray must complete a statement annually attesting that they have experienced no symptoms which may indicate active TB infection.

C. A report of all test results and all attestation statements shall be on file at the facility of employment.

68.12.6 All new employees shall be required to have a pre-employment physical examination. A copy of the pre-employment physical examination shall be maintained in individual personnel files.

68.12.7 Any individual who cannot adequately perform her/his duties or who may jeopardize the health or safety of the participants shall be relieved of his duties and removed from the center until such time as the condition is resolved. This includes infections of a temporary nature.

68.12.8 The adult day care provider shall provide for systematic performance review to communicate expectations and responsibilities, recognize achievement, and identify areas for skill development and work performance improvement. Performance reviews shall be completed annually and shall be maintained in the employee personnel record.

68.12.9 The director/administrator shall be responsible for complying with the regulations herein contained. In the absence of the director, a qualified substitute shall be authorized, in writing, to be in charge.

68.12.10 The director's/administrator's responsibilities shall include, but not be limited to, the following areas:

A. The development of the content of the program offered to the participants;

B. Programmatic functions, including orientation, training, and scheduling of all staff whether or not the director personally performs these functions; and

C. Assignment of a sufficient number of qualified staff to meet the participant's needs for:

1. Adequate nutrition;

2. Health supervision and maintenance;

3. Personal care;

4. Socialization;

5. Recreation;

6. Activities and stimulation; and,

7. Supervision, protection, and safety.

68.12.11 The director shall have a Bachelor's Degree in health or social services or a related field, with one year supervisory experience (full-time or equivalent) in a social or health service setting; have comparable technical and human service training with demonstrated competence and experience managing in a health or human service setting; [or, be a registered nurse with two years of supervisory experience (full-time or equivalent) in a social or healthcare setting].

68.12.12 Volunteers

A. All volunteers shall be under the supervision of the director/administrator or designated staff person.

B. The duties of volunteers shall be clearly defined.

C. The adult day care facility shall maintain a record of volunteer hours/activities and provide appropriate supervision of volunteers.

68.12.13 Aides/Assistants/Technicians

A. All aides must meet the following minimum criteria:

1. Completion of an orientation/training program which meets the requirements contained within these regulations; AND,

2. Certification as a nurse aide (CNA); or,

3. Possession of one year of experience in a health care setting; or,

4. [Enrollment in a nursing program and completion of ~~is a student nurse and has completed~~ a medical surgical clinical practicum.

B. All aides must pass a competency evaluation test prior to providing unsupervised care to participants in the program.

C. It is the responsibility of the adult day care program to ensure that aides are proficient to carry out the care assigned in a safe, effective, and efficient manner.

68.12.14 Staff Training and Development

A. Prior to assuming job responsibilities, all personnel shall receive training in:

1. Their individual responsibilities in the event of fire, including the location and operation of any fire extinguisher and fire alarm box;

2. Their individual responsibilities in the event of illness or injuries, including the location and use of the first aid emergency supplies;

3. Their individual responsibilities in the event of any emergency;

4. Infection control, body mechanics and first aid;
and

5. Special needs of the elderly, [~~the cognitively impaired~~ persons with cognitive disabilities] or persons with [other] disabilities, including the specific needs of the participants being served.

B. Ongoing staff development is required to maintain

and improve the skills of the adult day care team and should include:

1. The needs of the elderly and [~~disabled~~ persons with disabilities].

2. Assisting participants to achieve maximum self-reliance through re-learning and modifying activities of daily living.

3. Physical restraint and the use of less restrictive alternatives.

4. Maintaining an environment that encourages morale building and self-help.

5. Review of participant care policies and procedures.

6. Prevention and control of infection.

7. Confidentiality of participant information.

8. Rights of participants.

C. Personnel who are primarily responsible for the direct care of the participants shall attend at least twelve (12) hours annually of staff development activities which shall consist of in-service training programs, workshops, or conferences related to adult day care or specific needs of participants.

68.12.15 Aide Orientation and Training

A. An orientation/training program should be based on an instruction plan that includes learning objectives, clinical content and minimum acceptable performance standards.

B. The orientation program must include at least forty (40) hours of instruction and supervised practicum.

C. An orientation/training program must include the following:

1. The aide's role as a member of the adult day care team.

2. Personal care services.

3. Principles of good nutrition.

4. Process of growth, development, and aging.

5. Principles of infection control.

6. Observation, reporting, and documentation of participant status.

7. Maintaining a clean, safe, and healthy environment.

8. Maintaining a least restrictive environment.

9. Verbal/non-verbal communication skills.

10. Principles of body mechanics.

68.12.16 The adult day care program must maintain sufficient documentation to demonstrate that all requirements of this section have been met.

SECTION 68.13 QUALITY IMPROVEMENT

68.13.1 Each adult day care facility shall develop and implement a documented ongoing quality improvement program. The program shall include at a minimum:

A. An internal monitoring process that tracks performance measures;

B. A review of the program's goals and objectives at least annually;

C. A review of the grievance/complaint process;

D. A review of actions taken to address identified issues; and

E. A process to monitor the satisfaction of the participants and/or their representatives with the program.

SECTION 68.14 RECORDS AND REPORTS

68.14.1 There shall be a separate record maintained at the adult day care facility for each participant which shall contain:

A. Admission record: Including participant's name, birth date, home address, identification numbers, such as social security, Medicaid, Medicare, date of admission, physician's name, address and telephone number, diagnosis, names, addresses and telephone numbers of family members, friends, or other designated people to be contacted in the event of illness or an emergency;

B. A written history and physical examination performed by or under the direction of a physician within 6 months prior to admission;

C. Results of a medical evaluation or screening test for tuberculosis indicating the absence of active tuberculosis in an infectious stage within 1 year prior to admission;

D. Application and enrollment forms;

E. Assessment (initial and reassessments);

F. Nutritional status assessment as needed;

G. Individual plan of care (initial and reviews) and revisions;

H. Signed authorizations for releases of medical information and photos, as appropriate;

I. Signed authorization for participant to receive emergency medical care if necessary;

J. Ancillary reports;

K. Attendance and service records;

L. Transportation plans;

M. Where appropriate, medical information sheet; documentation of physicians' order; treatment, therapy, medication, and professional notes;

N. Progress notes, chronological and timely, including a monthly assessment of health, functional, and psychosocial status of participants;

O. Discharge plan;

P. Current photograph (~~biannually and taken~~) as necessary) depicting an accurate likeness of the participant;

Q. Advance [health-care] directive form [that complies with DE Code, Title 16, Part II, Chapter 25] or a statement that none has been signed.

R. A copy of the written agreement between the participant and the adult day care program including any

updates made to the original reflecting changes in services or arrangements.

S. Written acknowledgment that the participant or the participant's representative has been fully informed of the participant's rights.

68.14.2 All participants' medical records shall be maintained in accordance with professional standards.

68.14.3 All program records shall be available for review by authorized representatives of the Department and to legally authorized persons; otherwise such records shall be held confidential. The consent of the participant or her/his representative if the participant is incapable of making decisions shall be obtained before any personal information is released from her/his records as authorized by these regulations or Delaware law.

68.14.4 The adult day care facility records shall be retained for a minimum of five (5) years before being destroyed.

68.14.5 Records shall be protected from loss, damage, and unauthorized use.

SECTION 68.15 SEVERABILITY

68.15.1 In the event any particular clause or section of these Regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 7405, 7406 (16 Del.C. §1705, 1706)

Delaware Radiation Control Regulations

BEFORE THE DELAWARE AUTHORITY ON RADIATION PROTECTION ORDER

NATURE OF THE PROCEEDINGS

The Delaware Authority on Radiation Protection (The Authority) initiated proceedings to adopt Rules and Regulations Governing the State of Delaware Regulations Governing Radiation Control. The Authority's proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 74.

On May 1, 2002, The Authority published in the

Delaware Register of Regulations (Vol. 5, Issue 11) its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to The Authority by June 7, 2002, or be presented at a public hearing on June 3, 2002, after which time The Authority would review information, factual evidence and public comment to the said proposed regulations.

FINDINGS OF FACT

No verbal comments were received during the public hearing and no written comments were received during the official public comment period. The public comment period was open from May 1, 2002 to June 7, 2002. Verifying documents are attached to the Hearing Officer's record. The regulation has been reviewed and approved by the Delaware Attorney General's office.

The Authority finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the State of Delaware proposed Rules And Regulations Governing Radiation Control are adopted and shall become effective July 11, 2002, after publication of the final regulation in the Delaware Register of Regulations.

June 13, 2002 ROBIN ELLIOTT, CHAIR

*** PLEASE NOTE: DUE TO THE LENGTH OF THE PROPOSED RADIATION REGULATION THE FULL-TEXT IS NOT BEING PRINTED. FULL-TEXT COPIES OF THE REGULATION ARE AVAILABLE FROM THE REGISTRAR OR MAY BE VIEWED ON THE REGISTER OF REGULATION WEBSITE.**

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DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 7406 (16 Del.C. §1706)

Regulation for the Certification of Radiation Technologists/Technicians

BEFORE THE DELAWARE AUTHORITY ON RADIATION PROTECTION ORDER

NATURE OF THE PROCEEDINGS

The Delaware Authority on Radiation Protection (The Authority) initiated proceedings to adopt Rules and Regulations Governing the State of Delaware Regulations Governing Certification of Radiation Technologists/Technicians. The Authority's proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 74.

On May 1, 2002, The Authority published in the Delaware Register of Regulations (Vol. 5, Issue 11) its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to The Authority by June 7, 2002, or be presented at a public hearing on June 3, 2002, after which time The Authority would review information, factual evidence and public comment to the said proposed regulations.

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No verbal comments were received during the public hearing and no written comments were received during the official public comment period. The public comment period was open from May 1, 2002 through June 7, 2002. Verifying documents are attached to the Hearing Officer's record. The regulation has been reviewed and approved by the Delaware Attorney General's office.

The Authority finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the State of Delaware proposed Rules And Regulations Governing Certification of Radiation Technologists/Technicians are adopted and shall become effective July 11, 2002, after publication of the final regulation in the Delaware Register of Regulations.

June 13th, 2002, ROBIN ELLIOTT, CHAIR

**REGULATION FOR THE CERTIFICATION OF
RADIATION TECHNOLOGISTS/TECHNICIANS**

by the

AUTHORITY ON RADIATION PROTECTION

In conformance with

16 Delaware Code 7406 (c)

Effective July 11, 2002

DELAWARE

This Regulation is approved by the Authority on Radiation Protection on June 13, 2002, pursuant to 16 Del. C. §7406(c). Radiation Technologists/Technicians are "users of ionizing radiation" and, therefore, subject to certification by the Authority on Radiation Protection. This Regulation is effective July 11, 2002.

SECTION I FINDINGS

The Authority hereby finds and declares that the citizens of the State of Delaware are entitled to the maximum protection practicable from the harmful effects of excessive and improper exposure to ionizing radiation; that the protection can be increased by requiring appropriate education and training of individuals operating medical and dental equipment and sources emitting ionizing radiation; and that it is therefore necessary to establish certification standards in radiation protection principles for these operators and to provide for their appropriate examination and certification.

SECTION II TITLE OF REGULATION

This regulation shall be known as the "Radiation Technologist/Technician Certification Regulation".

SECTION III SEVERABILITY

If any provision or application of any provision of these Regulations is held invalid, that invalidity shall not affect other provisions or applications of these Regulations.

SECTION IV DEFINITIONS

As used in this regulation:

A. **"Agency"** means the administrative agent of the Authority on Radiation Protection; i.e., the Office of Radiation Control, Division of Public Health, Department of Health and Social Services.

B. **ARRT:** American Registry of Radiologic Technologists. A national certifying body that credentials through a national test graduates of JRCERT approved radiologic technology programs. The ARRT also provides the State Limited Scope Licensing Examination to be used by individuals who do not meet the national registry requirements.

C. **"Authority"** means the Authority on Radiation Protection as specified by 16 Del. C. §7404.

D. **"Certificate"** means a document issued by the Agency recognizing the successful completion of an Authority approved Certification Exam. The "Certificate" allows for the practice of radiation technology as specified by the level of examination the individual has passed. Other credentials include "Temporary".

1. Temporary - means a certificate issued by the Agency as a temporary authorization to practice Radiation Technology to any applicant who has complied with the provisions of this regulation and is scheduled for the next available examination.

E. **"Certification Examination"** means any examination satisfactory to the Authority that is used to determine the competency of Radiation Technologists/Technicians in the "principles and practice of radiation protection".

F. **CODA:** Commission on Dental Accreditation.

G. **"Dental Assistant"** means an individual, other than a "Licensed Practitioner", who applies radiation to humans for diagnostic purposes in dentistry.

H. **DANB:** Dental Assisting National Board which provides national registration for dental assistants.

I. **"Fee"** means the money [see schedule A] an individual must pay:

1. to apply for and to take the certification examination

2. for Re-certification - to reinstate an expired certificate

3. for Renewal - to renew a valid certificate

J. **JRCERT:** Joint Review Committee on Education in Radiologic Technology

K. **"Licensed Practitioner"** means an individual licensed to practice medicine, dentistry, dental hygiene, podiatry, chiropractic, or osteopathy in this State.

L. **"Medical Radiographer"** means an individual, other than a Licensed Practitioner, who exposes humans to ionizing radiation for diagnostic purposes in medicine, podiatry, chiropractic, or osteopathy.

M. **NMTCB:** Nuclear Medicine Technologist Certification Board which provides national certification of Nuclear Medicine Technologists.

N. **"Nuclear Medicine Technologist"** means an individual, other than a Licensed Practitioner, who uses radiopharmaceutical agents on humans for diagnostic and/or therapeutic purposes.

O. **"Radiation Technician"** means any individual who has not graduated from a approved program in radiation technology, but has passed an Authority approved examination.

P. **"Radiation Technologist"** means any individual who has successfully completed a JRCERT approved program in radiation technology and/or has passed a national certification examination in his/her field of specialization.

Q. **"Radiation Technology"** means the use of a

radioactive substance or equipment emitting ionizing radiation on humans for diagnostic or therapeutic purposes.

R. **"Radiation Therapist"** means an individual, other than a Licensed Practitioner, who exposes humans to ionizing radiation for therapeutic purposes.

S. **"Source of Radiation"** means a radioactive material, or any device or equipment emitting or capable of producing ionizing radiation.

T. **"User of Ionizing Radiation"** means an individual who supervises the application of ionizing radiation and/or applies ionizing radiation to human beings for diagnostic, therapeutic and/or research purposes (16 Del. C. §7403(9)).

SECTION V LEGAL TITLES

No individual, other than a Licensed Practitioner or Certified Radiation Technologist/Technician, shall use a Source of Radiation on humans for diagnostic, therapeutic and/or research purposes.

A. The Authority shall establish certification requirements for Radiation Technologists/Technicians; i.e., Dental Assistant, Medical Radiographer, Nuclear Medicine Technologist, and Radiation Therapist. Individuals holding these certificates shall be recognized by such title(s).

B. Any individual certified under this regulation is authorized to use a source of radiation on humans for diagnostic or therapeutic purposes under the supervision of a Licensed Practitioner, and in accordance with the Delaware Radiation Control Regulations.

C. Holders of a certificate (legal title) under this regulation shall display the official certificate or a verified copy in each place of regular employment.

SECTION VI CREDENTIALING PROCESS

A. Classification of Credentials

- 1. Certificate (Section VII A)**
- 2. Temporary Certificate (Section VII B)**

B. Application

1. The Agency shall accept an application for credentialing from any Radiation Technologist/Technician who is at least 18 years of age or who is currently enrolled in and attending an educational program in radiation technology and who pays a non-refundable application and examination fee (if applicable) established by rule of the Authority.

2. One or more booklets on basic radiation protection and terminology, examination specifications, and requirements for certification and examination shall be prepared and distributed under the supervision of the Authority on Radiation Protection in consultation with appropriate professional associations (see Schedule B). Upon acceptance of the application and examination fee, a copy of the booklet shall be sent to all applicants.

3. The application shall be valid for a period of six (6) months.

C. Examinations

1. The examination process shall be administered by the Authority on Radiation Protection or its designee, the ARRT (American Registry of Radiologic Technologists) or Exporior Assessments. The fee for examination shall accompany the application request.

2. The Authority may accept, in lieu of an examination, a current credential by a recognized national voluntary credentialing body. (See Schedule C) issued on the basis of an examination consistent with the requirements established by the Authority, provided that the radiation protection standards to which that body adheres are at least as stringent as those established by the Authority.

3. An examinee who fails to pass the certification examination may be re-examined, provided the prescribed application and examination fees for each re-examination are paid.

SECTION VII ISSUING CREDENTIALS

A. The Agency may issue a Certificate or Temporary Certificate to each applicant who has successfully met the requirements under Section VI, Subsection B, and has paid the prescribed fees. Furthermore, the Certificate shall be issued on verifying that the applicant has passed a certification examination acceptable to the Authority [see C.1. and C.2. above]. The initial Certificate shall expire after a period of four (4) years from date of issue. Certificates based on national credentials will automatically terminate if the national credentials are permitted to lapse.

B. Temporary Certificate--The Agency may issue a Temporary Certificate to any person whose certification or re-certification may be pending and when issuance is justified by special circumstances. A Temporary Certificate may be issued if the Agency finds that it will not violate the purpose of this regulation or endanger the public health and safety. A Temporary Certificate shall grant the same rights as the credential for which the applicant is awaiting examination. Such credential may not be renewed by the Agency without the approval of the Authority and only for just cause.

The Temporary Certificate shall expire:

- 1. on the date of notification of the results of the certification examination; or,**
- 2. on the certification examination date if the applicant does not take the examination; or,**
- 3. in any case, after a maximum of 365 days from the date of issue.**

C. A valid certificate may be renewed by the Agency for a period of four (4) years upon payment of a renewal fee (see Schedule A) established by the Authority.

1. Applicants for renewal of certificates based on national credentials must provide proof that the national credentials are currently valid.

D. A Radiation Technologist/Technician whose

certificate has lapsed for a period of less than 180 days shall apply for re-certification provided that he/she presents evidence of having previously passed a Certification Examination approved by the Authority and pays the re-certification fee.

A. Radiation Technologist/Technician whose certificate has lapsed for more than 180 days shall:

1. Apply for re-certification
2. Apply to take the appropriate certification examination or show proof of currently valid national credentials
3. Pay the re-certification and re-examination fees

A radiation technologist/technician who has allowed his/her certificate to expire shall not expose humans to ionizing radiation until and unless he/she is re-certified.

SECTION VIII LIMITATIONS OF CREDENTIALS

A. Nothing in the provisions of this regulation relating to Radiation Technology shall limit, enlarge, or affect the practice of Licensed Practitioners herein defined.

B. The requirement for certification shall not apply to a resident physician, dentist, dental hygienist or to a student enrolled in and attending a school or college of medicine, osteopathy, chiropractic, podiatry, dentistry, or radiation technology who applies ionizing radiation to humans in such an educational program while under the supervision of a certified Radiation Technologist.

C. A certificate, registration or license issued by another state will not be accepted as a valid equivalent Radiation Technologist/Technician certification by the Authority.

SECTION IX APPEALS, ENFORCEMENTS AND PENALTIES

A. OFFENSES

The following is a list of offenses which are grounds for disciplinary actions of a certified Radiation Technologist or certified Radiation Technician and are the basis for refusal of an application for certification:

The certificate holder or applicant:

1. has been found guilty of fraud or deceit in procuring or attempting to procure a certificate to practice radiation technology; or
2. has been convicted of a felony; or
3. has been convicted of a crime involving moral turpitude or gross immorality; or
4. is unfit or incompetent by reason of gross negligence; or
5. is addicted to the use of habit-forming drugs and not currently under treatment for the addiction; or
6. has a physical or mental condition that prohibits the certificate holder from performing the essential functions of the practice authorized by the certificate; or
7. has a certificate to practice as a registered

technologist that has been suspended or revoked in any jurisdiction; or

8. is guilty of unprofessional conduct, or the willful neglect of a patient.

B. DISCIPLINARY SANCTIONS

The Authority on Radiation Protection may impose any of the following sanctions singly or in combination when it finds a certificate holder or an applicant is guilty of any offense described in Section A:

1. Permanently revoke a certificate to practice
2. Suspend a certificate until the certificate holder provides proof that the conditions in response to which the suspension was issued no longer exist.
3. Censure a certificate
4. Issue a letter of reprimand
5. Refuse a certificate (Applicant)
6. Refuse to renew a certificate

C. PROCEDURE

1. THE AUTHORITY

a. The Agency may, upon complaint or upon its own initiative, investigate whether a certificate holder or applicant has engaged in activities specified in this section as grounds for disciplinary action. The Agency shall file a complaint with the Authority seeking to impose sanctions against the alleged violator.

b. The Authority shall notify the alleged violator of the complaint and offer the alleged violator the opportunity for a hearing, which must be requested within 30 days of the date of notification. If the alleged violator does not timely request a hearing, the proposed sanctions shall become final. If the alleged violator makes a timely request for a hearing, the Authority shall schedule the hearing and give the alleged violator at least 15 days notice prior to the date fixed for the hearing.

c. In all proceedings herein:

- 1) The alleged violator may be represented by counsel who shall have the right of examination and cross-examination.
- 2) The alleged violator and the Agency may subpoena witnesses. Subpoenas shall be issued by the Chairman or Vice Chairman of the Authority upon written request.
- 3) Testimony before the Authority shall be under oath. Any member of the Authority shall have power to administer oaths for this purpose.
- 4) A stenographic record of the hearing shall be made by a qualified court reporter. At the request and expense of either party such record shall be transcribed with a copy to the other party.
- 5) The decision of the Authority shall be based upon a preponderance of the evidence. If the charges are supported by such evidence, the Authority may refuse to issue, or may revoke or may suspend a certificate, or otherwise discipline a certificate holder as outlined in these

regulations.

6) The decision of the Authority will be sent to the alleged violator by certified mail.

7) Any final order of the Authority may be appealed to the Superior Court.

8) All findings of the original action, hearing, appeal and conclusions will be held in file at the Agency.

9) The Agency shall notify the employer of the alleged violator of any final order of the Authority regarding any action taken against the certification of that employee by registered, return receipt mail.

D. JUDICIAL REVIEW BY SUPERIOR COURT

Any final order entered in any proceeding by the Authority shall be subject to judicial review by the Delaware Superior Court per 16 Del. C. §7412(c).

E. UNLAWFUL PRACTICE OF RADIATION TECHNOLOGY

No person shall practice or offer to practice radiation technology or claim to be a registered or certified radiation worker in Delaware, or shall use any title, abbreviation, sign, card, or device to indicate that such person is certified pursuant to this regulation unless such person is actually certified by the Authority on Radiation Protection.

SCHEDULE A
Credential Fees

Certificate Category	Application	Examination	Renewal
Dental Assisting	Included in examination fee per testing organization	Per Testing Organization	\$10.00 for 4 years

Medical Radiation Technician	\$10.00	Per Testing Organization	\$10.00 for 4 years
Medical Radiation Technologist	\$10.00	Per National Board	\$10.00 for 4 years

Nuclear Medicine	\$10.00	Per National Board	\$10.00 for 4 years
Radiation Therapy	\$10.00	Per National Board	\$10.00 for 4 years

SCHEDULE B

Delaware Professional Associations

- Dental Assistants Association
- Dental Hygienists Association

- Medical Society of Delaware
- Society of Nuclear Medicine Technologists Section
- Delaware Society of Radiology Professionals
- Dental Society of Delaware

SCHEDULE C

LIST OF NATIONAL CREDENTIALING ORGANIZATIONS ACCEPTABLE FOR DELAWARE CERTIFICATION

1. American Registry of Radiologic Technologists
2. Dental Assisting National Board
3. Nuclear Medicine Technologist Certification Board

DIVISION OF SOCIAL SERVICES
Statutory Authority: 31 Delaware Code,
Section 107 (31 Del.C. 107)

ORDER
NATURE OF THE PROCEEDINGS

Delaware Health and Social Services (“Department”) / Division of Social Services / Medicaid/Medical Assistance Program initiated proceedings to implement new policy in the Division of Social Services Manual (DSSM): DSSM 50000 - 50930. This regulatory action provides written policy for procedures already in place for the Chronic Renal Disease Program. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the May, 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

Note: DSS initiated changes (clarification and re-numbering) are reflected in bracketed bold text.

FINDINGS OF FACT

The Department finds that the proposed changes as set forth in the May, 2002 Register of Regulations should be adopted, as herein revised.

THEREFORE, IT IS ORDERED, that the proposed

regulation of the Medicaid/Medical Assistance Program regarding the Chronic Renal Disease Program is adopted, as herein revised, and shall be final effective July 10, 2002.

June 13, 2002, Vincent P. Meconi, Secretary, DHSS

50000 CHRONIC RENAL DISEASE PROGRAM

The Delaware Legislature established the Chronic Renal Disease Program (CRDP) effective 1970 by enacting Title 29, Chapter 79, Subchapter 11, Sections 7932-7935. The purpose of this program is to provide assistance to state residents diagnosed with End Stage Renal Disease (ESRD). The CRDP is not federally funded. CRDP is 100% State funded. Since there are limited funds available, the CRDP should only be utilized as a program of last resort. All third party resources (Medicare, Medicaid, Veteran's Benefits, and Private Insurance) must be ~~used~~ **considered** before CRDP funds are utilized.

The mission of the CRDP is to "improve the quality of life for Delawareans with ESRD by promoting health and well-being, fostering self-sufficiency, and protecting a vulnerable population."

The Chronic Renal Disease Advisory Board is composed of 11 members who are appointed by the Secretary of Delaware Health and Social Services. The role of this Advisory Board is to consult with the Secretary in the administration of the Chronic Renal Disease Program, as needed. Board members represent hospitals and medical centers, which establish dialysis centers, voluntary agencies interested in kidney diseases, related public agencies, physicians licensed to practice medicine and the general public.

50100 Services Provided by CRDP

Services provided by the CRDP can consist of payment for medications, nutritional supplements and transportation. Electronic Data Systems (EDS) is the CRDP's fiscal intermediary. They are responsible for processing all eligible CRDP claims.

50100.1 Medications

The CRDP has the ability to fund prescription medications, over-the-counter medications (OTC's) or both. Services covered include generic and brand name prescription drugs that have been approved as safe and effective by the Federal Food and Drug Administration as well as cost effective over-the-counter drugs prescribed by a practitioner.

Reimbursement for medications will be made only for client's authorized by the CRDP. Client's eligibility for the medication benefit is based upon the outcome of their medical and financial assessment.

Prescription medications potentially will be funded if prescribed by a physician for eligible clients. Refills may be authorized in compliance with appropriate

pharmacy laws.

Reimbursements for OTC products for eligible clients are those, which the physician/practitioner has provided written or verbal authorization to the pharmacist. These products must be for the client's personal use only. There will be no reimbursement for OTC products that are not prescribed by a physician/practitioner. Supplies such as mouthwash, toothpaste, shampoo, etc. will not be reimbursed.

At point of sale, the pharmacist will determine electronically if CRDP will fund the requested product. In order for the pharmacy to receive CRDP payment, they must have a Delaware Medicaid provider number.

Note: All third party resources must be used before CRDP funds are utilized.

50100.2 Nutritional Supplements

~~The CRDP funds oral nutritional supplements for ESRD clients. An oral nutritional supplement is a supplement required to nutritionally support clients who, due to renal failure cannot receive all the necessary nutrition through their daily oral intake. This item is ingested orally and is utilized as a supplement to their daily oral intake.~~ Nutritional supplements will only be funded by the CRDP if the client is diagnosed with ESRD, **[AND is] on dialysis, [or has received a kidney transplant]** and exhibits signs and symptoms of malnutrition as determined by documentation of specific laboratory values. Additionally, the only nutritional supplements funded by the CRDP are those currently on the formulary as dictated by First Data Bank.

Other criteria that must be met include:

- it is reasonable and necessary part of the client's treatment plan;
- ordered by a physician or certified nurse practitioner as indicated by completion of a Medical Necessity Form;
- not furnished for the convenience of the client, client's family, attending practitioner, or other practitioner or supplier;
- necessary and consistent with generally accepted professional medical standards;
- monitored and assessed regularly by the attending practitioner to determine effectiveness and necessity.

The CRDP will fund oral nutritional supplements for a durational period of 6 months or less as needed. The durational period is dependent upon the client's medical and financial situation. If the client will need the supplement past the authorized durational period, the practitioner must submit another Certificate of Medical Necessity Form. Upon submission CRDP will redetermine eligibility. Claims submitted without prior approval, or exceeding the authorized durational period may be denied.

50100.3 Transportation

The CRDP may reimburse for transportation to and from the dialysis unit, transplant hospital, or in exceptional cases, related medical appointments. Once determined eligible, all types of reimbursable transportation will be explored for cost effectiveness.

The types of transportation funded by CRDP are:

- Mileage Reimbursement - the CRDP may reimburse the client, client's spouse, caregiver, or anyone who consistently transports clients. Round trip mileage must be greater than 10 miles to be eligible.
- Delaware Authority for Regional Transit (DART) tickets - the CRDP will purchase DART tickets for client use. A monthly supply of DART tickets is sent to the dialysis social worker for distribution. These tickets are replaced monthly based on the previous month's usage.
- Private Transportation Companies - The CRDP may contract with private transportation companies. Transportation may be supplied via company vehicle or by a volunteer who is trained by the Transportation Company.

50200 Services Not Provided by CRDP

The CRDP will not pay health insurance premiums; nor will the program pay for medical, hospital, or ancillary services, medical supplies, or transportation not directly related to the care of End State Renal Disease (ESRD).

50300 Referral Process

The CRDP can receive referrals from many sources. Client, family, caretaker, physicians and/or other professionals may initiate the referral process by calling the CRDP office. Dieticians and dialysis social workers may begin the referral process by calling or by mailing/faxing a completed referral form to the CRDP office. Once the referral has been received, the client or referral source will be contacted to set up an appointment to complete the CRDP assessment.

50400 Application Process

The client must complete an application in person or via the telephone. The individual must also provide the requested verifications necessary to determine eligibility.

CRDP will consider applications without regard to race, color, age, sex, disability, religion, national origin, or political belief, as per Title VI of the Civil Rights Act of 1964.

Filing an application gives the applicant the right to receive a written determination of eligibility and the right to appeal the written determination.

At time of application and/or redetermination, each

individual must be informed that they are responsible for notifying the CRDP worker of all changes in their circumstances, which could potentially affect their eligibility for the CRDP.

50450 Disposition of Applications

Each applicant's case record must include facts to support the eligibility decision. Each application will be determined eligible or ineligible, unless:

- a. there is an entry in the case record that the applicant voluntarily withdrew the application
- b. there is a supporting entry in the case record that the applicant has died; or
- c. there is a supporting entry in the case record that the applicant cannot be located.

Certain factors of eligibility must be verified. If all information requested is not received, eligibility cannot be determined or redetermined. This may result in denial of the application or the termination of eligibility. Verifications received and/or provided may reveal a new eligibility issue not previously realized and this may require additional verifications. Failure to provide additional requested verifications may result in denial or termination of eligibility.

All applicants will receive a notice of action taken on the applications.

Eligibility for CRDP will be redetermined on an annual basis.

50500 Technical Eligibility

Only persons who are residents of the State of Delaware shall be eligible for services. Additionally, the individual must be an U.S. citizen or a lawfully admitted alien.

50600 Medical Eligibility

The client must be diagnosed with ESRD, receive dialysis or have had a renal transplant.

50700 Financial Eligibility

CRDP staff determines financial eligibility. The amount of assistance received from the CRDP is dependent upon the applicant's financial situation. Applicant's/client's income and resources need to be below 300% of the Federal Poverty Level (FPL). Applicants/clients with income and resources above 300% of the FPL may be eligible for an annual medication cost deduction from the applicant's/client's annual income and resources. If, after this deduction, income and resources are below 300% of the FPL, the individual may be eligible.

Additional factors that may be considered for eligibility include, but are not limited to:

- Number of household members financially dependent on applicant/client
- Cost of certain medications

- Household expenses
- Income/resources of applicant/client
- Income/resources of any household member that contributes to household expenses.

[50750 50700.1] Income

Income is the total amount of money authorized and received for the applicant's benefit. Income includes anything received by the individual in cash or in kind, that can be used to meet needs for food, clothing or shelter. Gross income is used to determine eligibility. Some examples of income include, but are not limited to the following: Social Security, Railroad Retirement, pensions, wages, rental income, etc.

[50775 50700.2] Resources

Resources are items that can be converted to cash to be used for food, clothing or shelter. Some examples of resources include, but are not limited to the following: bank accounts, stocks, bonds, certificates of deposit, money market funds, retirement funds, etc.

If the individual has the right, authority or power to liquidate his or her share of the property, it is a resource. In addition, the individual must have:

- Some form of ownership interest in the property;
- A legal right to access the property;
- The legal ability to use the property for his/her own support and maintenance.

50800 Resident of a Long Term Care Facility

An individual who has been admitted to a nursing facility for placement other than rehabilitation will not be eligible for or continue to be eligible for CRDP services. If the individual is discharged from the nursing facility, they may reapply for CRDP services.

50900 Fair Hearings

A fair hearing is an administrative hearing held in accordance with the principles of due process. An opportunity for a fair hearing will be provided, subject to the provisions in policy at DSSM sections 5000-5607.

[50940 51000.1] Waiting List Policy [50920] General Statement

The applicant must meet certain medical and financial criteria in order to be eligible for benefits from the Chronic Renal Disease Program. (For eligibility criteria see DSSM sections 50600 and 50700) A waiting list will be maintained according to the need of each client/potential client, with those with most critical needs served first.

Referrals are prioritized on the waiting list according to medical/financial need.

The number of clients served by the CRDP program is limited by the amount of available funds. If the CRDP budget has been depleted prior to the end of the fiscal year,

clients on the CRDP waiting list will be processed for CRDP benefits at the beginning of next fiscal year.

[50930 51000.2] Medical Criteria

Within 24 hours of referral receipt, medical eligibility specific to the individual's need will be determined. The order of priority will be medications/supplements and transportation services.

[50940 51000.3] Financial Criteria

Within 24 hours of referral receipt, financial eligibility and specific need will be determined. Clients, who have a documented medical need and appear to be financially eligible for CRDP, with limited income and no insurance, will be given highest priority.

The order of priority will be clients with limited income and no insurance coverage, minimal insurance coverage, or insurance copays.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
WASTE MANAGEMENT SECTION**
Statutory Authority: 7 Delaware Code, Chapters
60 and 63 (7 Del.C. Ch. 60 and 63)

**Secretary's Order No.: 2002-A-0038
2002 Proposed Amendments to the
Delaware Regulations Governing Hazardous Waste**

Date of Issuance: June 13, 2002

Effective Date of the Amendment: July 11, 2002

I. Background

On March 12, 2002 a public hearing was held in the DNREC Auditorium in Dover to receive comment on proposed amendments to the State of Delaware's *Regulations Governing Hazardous Waste*. The proposed amendments have already been promulgated by EPA and are already in effect at the Federal level. Delaware is proposing to adopt these amendments as part of its requirements to maintain equivalency with its program authorization and equivalency with EPA's hazardous waste program.

Additionally, Delaware is making miscellaneous changes to the existing regulations for the purpose of correcting errors and to add consistency or clarification to the existing regulations. Some of these amendments are being made to the existing regulations in order to improve or

enhance the performance of the hazardous waste management program.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated June 4, 2002, and that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated June 4, 2002 are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that the proposed amendments to the **Delaware Regulations Governing Hazardous Waste** be promulgated and implemented in the manner and form provided for by law pursuant to the changes proposed prior to the hearing and as recommended in the Hearing Officer's memorandum.

IV. Reasons

Adopting the proposed amendments to the **Delaware Regulations Governing Hazardous Waste** will be beneficial to the State of Delaware, in that these amendments will add consistency and/or clarification to the existing regulations. Additionally, some of these amendments will enable the State of Delaware to improve and/or enhance the overall performance of the hazardous waste management program. Furthermore, the adoption of these amendments will permit the State of Delaware to maintain its RCRA program delegation, and remain current with the Federal hazardous waste program.

Nicholas A. DiPasquale, Secretary

2002 Amendments to Delaware Regulations Governing Hazardous Waste

Synopsis

This synopsis presents a brief description of the 2002 amendments to *Delaware Regulations Governing Hazardous Waste* (DRGHW) and a list of those sections generally affected by the amendments. This summary is provided solely for the convenience of the reader.

These changes incorporate certain RCRA amendments promulgated by U. S. EPA into Delaware's hazardous waste management program. The State is required to adopt these

amendments in order to maintain its hazardous waste program delegation and remain current with the Federal RCRA hazardous waste program.

The State is also making miscellaneous changes to the existing regulations for the purpose of correcting errors and to add consistency or clarification to the existing regulations. Some amendments are being made to the existing regulations in order to improve or enhance the performance of the hazardous waste management program.

Summaries for the regulatory amendments are listed below and organized by EPA's promulgating **Federal Register** notice. For additional information, please contact the Solid and Hazardous Waste Management Branch at (302) 739-3689.

1. Title: Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes

Federal Register Reference: 65 FR 67068-67133
Federal Promulgation Date: November 8, 2000

Summary: This amendment adds two wastes (K174 and K175) generated by the chlorinated aliphatics industry to the list of hazardous wastes at 40 CFR 261.32. The new wastes will be subjected to stringent management and treatment standards under RCRA, and to emergency notification requirements. EPA is allowing a contingent-management listing approach for one of these new wastes. Under this approach, the waste will not be a listed hazardous waste if sent to a specific type of management facility.

Sections of the DRGHW effected by this amendment: §261.32; Part 261 Appendix VII & VIII; §268.33; §268.40/Table; and §268.48(a)/Table.

~~2. Title: Mixed Waste Rule~~

~~Federal Register Reference: 66 FR 27218 - 27266
Federal Promulgation Date: May 16, 2001~~

~~**Summary:** This rule promulgates conditional exemptions for: (1) low level mixed wastes (LLMW) from most RCRA Subtitle C storage and treatment regulations, and (2) LLMW and technologically enhanced naturally occurring and/or accelerator-produced radioactive material (NARM) from most RCRA Subtitle C manifesting, transportation, and disposal regulations when specified conditions are met. With this rule, the EPA intends to provide regulatory flexibility and relief to facilitate the disposal of certain LLMW and eligible NARM.~~

~~**Sections of the DRGHW effected by this amendment:** New subpart N (§§266.210 to 266.360) is added to Part 266.~~

3. Title: Mixture and Derived From Revisions

Federal Register Reference: 66 FR 27266 - 27297

~~Federal Promulgation Date: May 16, 2001~~

~~Summary: This rule finalizes the retention of the mixture rule and the derived from rule with two revisions. The first revision expands the exclusion for mixtures and/or derivatives of wastes listed solely for the ignitability, corrosivity and/or reactivity characteristic. The second revision is a new conditional exemption from the mixture and derived from rules for mixed wastes.~~

~~Sections of the DRGHW effected by this amendment: §261.3, paragraphs (a), (c), (g), and (h).]~~

4. Title: Change of Official EPA Mailing Address

Federal Register Reference: 66 FR 34374 - 34376

Federal Promulgation Date: June 28, 2001

Summary: This rule updates the official mailing address for EPA, due to the relocation of the majority of its Headquarters offices to downtown Washington, DC.

Sections of the DRGHW effected by this amendment: §260.11(a)(11).

5. Miscellaneous Changes

Summary: Proposed miscellaneous changes to DRGHW include non-substantive corrections for typographical or grammatical errors; reinsertion of paragraph (i) in §265.1085 that was correctly adopted but not incorporated in the final regulations; a degree symbol in §279.11, Table 1 is corrected; and the title of Appendix VIII to Part 268 is corrected.

In addition, the SHWMB proposes to: delete language referencing approval by the Secretary of alternative test methods for ignitability found at the end of §§261.21(a)(1) and (a)(3); require generators subject to contingency plan requirements in §264.53 to maintain a printed copy of the plan; prohibit use of a letter to request an EPA Identification Number by used oil transporters; and requiring the first attempt at repair of devices subject to subparts AA, BB, and CC of parts 264 and 265 to begin immediately after detecting a leak or defect in the device.

Sections of the DRGHW effected by this amendment: §§260.21(a)(1) and (a)(3); §264.53(a), §264.344(c)(1), §264.1033(i)(3)(ii), §§264.1052(c)(2) and (d)(6)(iii), §264.1053(g)(2), §264.1057(d)(2), §264.1058(c)(2), §264.1084(k)(1), §264.1085(f)(1), §264.1086(c)(4)(iii), §265.37(a), §265.1033(k)(3)(ii), §265.1052(d)(6)(ii), §265.1053(g)(2), §265.1057(d)(2), §265.1058(c)(2), §265.1085(i), §265.1085(k)(1), §265.1086(f)(1), §265.1087(c)(4)(iii), Part 265 Appendix I, Part 268 Appendix VIII, §279.11 Table 1, and §279.42(b).

DEPARTMENT OF STATE DIVISION OF HISTORICAL AND CULTURAL AFFAIRS

Statutory Authority: 30 Delaware Code,
Section 1815(b), (30 Del.C. 1815(b))

Order Adopting and Promulgating Regulations for the Historic Preservation Tax Credit Program.

AND NOW, this 11th day of June, 2002, Harriet N. Smith Windsor, as Secretary of State, in accordance with 30 **Delaware Code** Chapter 18 Subchapter II Section 1815(b), as amended, for the reasons stated below enters the ORDER adopting and promulgating the "Regulations for the Historic Preservation Tax Credit Program."

Nature of Proceedings

The Department of State, Division of Historical and Cultural Affairs (DHCA), initiated proceedings in accordance with 29 **Delaware Code** Chapter 101 to adopt Regulations for the Historic Preservation Tax Credit Program. On August 1, 2001 the Division of Historical and Cultural Affairs published its notice and proposed regulations in the Register of Regulations. Additionally, in accordance with 29 **Delaware Code**, Chapter 101, notice of the proposed regulations and opportunity for written public comment was published in two newspapers of general circulation throughout the state. The notice requested that written comments from the public concerning the proposed regulations be delivered to the Division of Historical and Cultural Affairs by August 31, 2001. Subsequently, the law establishing the Historic Preservation Tax Credit Program was amended to effect corrections necessary for the administration of the program and promulgation of regulations. The Department of State, Division of Historical and Cultural Affairs revised and republished proposed regulations for the Historic Preservation Tax Credit Program on May 1, 2002. Additionally, notice of the proposed Regulations and opportunity for written comment from the public was published in two newspapers of general circulation throughout the state. The public comment period was from May 1, 2002 through May 31, 2002, and members of the public could submit written comments on the proposed Regulations by sending them to the Division of Historical and Cultural Affairs at its offices at 604 Otis Drive, Dover, Delaware 19901.

Summary of Evidence

The evidence in this matter consisted of written comments from Pepper Hamilton LLP and The Ingerman

Group. Comments on the proposed regulations have been evaluated as follows:

One comment recommended that the section describing the program's scope be amended to reflect the statutory provision that the tax credits may be transferable and are not limited to owners and rehabilitators of certified historic properties. The comment is accurate in that once awarded, credits are transferable. Accordingly, the final regulations have added language to this section directly from the statute. Since this change is made to conform with the statute, DHCA does not believe that such change requires republication for a further public comment period.

A comment recommended changing a referenced term in the definition of "Certified Rehabilitation" from "certified historic structure" to "certified historic property." DHCA extracted the language verbatim from the definition in the statute. The DHCA lacks the authority to make such a change from the statutory language in the regulations and does not believe the term as defined in the regulations will affect the way in which the program is administered.

The statute and regulations provide for tax credits under this program for the rehabilitation of properties for low-income housing. One comment suggested the need for a definition of residential property to clarify that apartment complexes qualify for tax credit under this provision and recommended defining the term "low-income housing." DHCA believes that inclusion of the term "multi-unit structures" in the definition of "property" adequately represents the eligibility of apartment complexes for the credit and finds that additional definition is unnecessary. The definition of "low-income housing" and the application of tax credits to "low-income housing" are not within the purview of regulations to be administered by DHCA. The DHCA regulations are focused on the certification of historic properties and the certification of rehabilitation of historic properties. Therefore, it is not necessary to include a definition of "low-income housing" in these regulations. For the purposes of implementing this provision of the statute, the definition of "low-income housing" or "affordable housing" will conform with the definition adopted by the Delaware State Housing Authority (Section 42(I)(3) of the Internal Revenue Code). This definition and information will be incorporated into program guidance materials and application instructions.

The regulations provide for taxpayers to begin construction on projects having received approval of the Part 2 rehabilitation plan within one year of receiving the Part 2 approval and to provide DHCA with written notification of the start date of the rehabilitation work. One comment recommended modifying this section to address properties that have already received "a Part 2." This section of the regulations applies to taxpayers having received Part 2 approval, and the language in this section specifically states so. Furthermore, all applicants are subject to the Delaware

State Tax Credit Part 2 provision whether or not they have already received a Federal Tax Credit program Part 2 approval. Therefore, DHCA does not believe this section of the regulations warrants further clarification.

This commenter further recommended requiring a building permit in order to document the start of construction. The regulation requires that the State Office be notified in writing of the start date of rehabilitation. DHCA does not believe it is necessary to require that a copy of the building permit accompany the notification letter. The critical issue in this section of the regulations is that the project be substantially commenced and diligently pursued within one year of receiving the State Part 2 approval. DHCA believes the regulations adequately provide for a mechanism to determine this compliance and the necessary documentation.

Findings of Fact

The Department of State finds that the proposed regulations, as set forth in the attached copy, should be adopted as final regulations.

Order and Effective Date

NOW THEREFORE, it is ordered that the proposed Regulations for the Historic Preservation Tax Credit program are promulgated effective July 11, 2002.

6/11/02

Harriet N. Smith Windsor, Secretary of State

1.0 Scope

A person or business entity that owns and rehabilitates a certified historic property may receive a credit against personal Delaware State income tax or bank franchise tax liabilities according to procedures and criteria established in these regulations and those that may be promulgated by the Division of Revenue or the State Bank Commissioner. [Any person eligible for credits under this Chapter may transfer, sell or assign any or all unused credits.]

2.0 Statutory Authority

These regulations are created pursuant to Chapter 18, Subchapter II of Title 30 **Delaware Code** (as amended) which authorizes the Division of Historical and Cultural Affairs to promulgate regulations for implementation of the provisions of this subchapter (except tax-related procedures) including, but not limited to, setting of fees and development of standards for the rehabilitation of eligible historic properties. The subchapter further authorizes the Division of Historical and Cultural Affairs to promulgate the application and forms governing participation in the certification program.

3.0 Definitions

3.1 **"Act"** means Chapter 18, Subchapter II of Title 30 **Delaware Code**, as amended.

3.2 **"Application"** means the Delaware Historic Preservation Tax Credit application that shall consist of three parts, as follows: the Request for Certification of Historic Property (Part 1); the Request for Certification of Rehabilitation (Part 2); and the Request for Certification of Completion (Part 3).

3.3 **"Certified historic property"** shall mean a property located within the State of Delaware that is:

3.3.1 individually listed in the National Register of Historic Places; or

3.3.2 located in a historic district listed in the National Register of Historic Places, and certified by the United States Secretary of the Interior as contributing to the historic significance of that district; or

3.3.3 individually designated as a historic property by local ordinance and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register of Historic Places; or

3.3.4 located in a historic district set apart or registered by a local government, certified by the Delaware State Historic Preservation Office as contributing to the historic significance of such area, and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register.

3.4 **"Certification of Completion", "Completion Certificate" or "Certificate"** shall mean the certificate issued by the Delaware State Historic Preservation Officer attesting that certified rehabilitation has been completed and that the documentation of qualified expenditures and project plans that would be required in order to qualify for tax credits under Section 47 of the Internal Revenue Code (whether or not such project would be eligible for such federal tax credit) has been obtained.

3.5 **"Certified rehabilitation"** shall mean that rehabilitation of a certified historic structure that has been certified by the Delaware State Historic Preservation Officer as a substantial rehabilitation, and is in conformance with the Standards of the Secretary of the Interior for Rehabilitation (36 CRF, part 67) or such other standards as the Delaware State Historic Preservation Office shall from time to time adopt.

3.6 **"Credit award"** shall mean the amount of qualified expenditures as determined by the State Office as part of the Part 2 approval multiplied by the appropriate amount as determined in Section 1813 of Chapter 18, Subchapter II of Title 30 **Delaware Code**, (as amended).

3.7 **"Delaware State Historic Preservation Officer"** shall mean the person designated and appointed in accordance with 16 USC Sec. 470a(b)(1)(a), as amended.

3.8 **"Federal tax credit"** shall mean the Federal Rehabilitation Tax Credit as defined in the United States Tax

Code, Title 26, Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart E, Section 47.

3.9 **"Fiscal Year"** shall mean the State's fiscal year.

3.10 **"National Register of Historic Places"** or "National Register" shall mean the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture that the United States Secretary of the Interior is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, as amended.

3.11 **"Office" or "State Office"** shall mean the Delaware State Historic Preservation Office.

3.12 **"Owner-occupied historic property"** shall mean any certified historic property, or any portion thereof, which is owned by a taxpayer and is being used, or within a reasonable period will be used, by such taxpayer as the taxpayer's principal residence. "Reasonable period" shall mean within six months of the issuance of the Certification of Completion. The State Office, in its sole discretion, may offer one extension, not to exceed three months, for cause. Such property may consist of part of a multiple dwelling or multiple purpose building or series of buildings, including a cooperative or condominium. If only a portion of a building is used as the principal residence, only those qualified expenditures that are properly allocable to such portion shall be eligible under this subchapter.

3.13 **"Person"** shall include any individual; any form of company or corporation which is lawful within the State of Delaware (including limited liability companies and S corporations), whether or not for profit; any form of partnership which is lawful within the State of Delaware (including limited liability partnerships), whether or not for profit; any trust or estate, and any lawful joint venture. "Person" shall also include any governmental entity, pass-through entity, or person under a lease contract for five years or longer.

3.14 **"Property"** shall mean real estate, and shall include any building or structure, including multiple-unit structures.

3.15 **"Qualified expenditure"** shall mean any amount properly expended by a person for the certified rehabilitation of a certified historic property, but shall not include:

3.15.1 acquisition of real property, or acquiring an interest in real property;

3.15.2 any addition to an existing structure, except where the combined square footage of all additions is twenty percent or less than the total square footage of the historic portion of the property; and each such addition is approved by the Delaware State Historic Preservation Officer, pursuant to federal guidelines, as:

3.15.2.1 preserving the character-defining features of the certified historic property.

3.15.2.2 adequately differentiating the new construction from the existing structure, and

3.15.2.3 complying with requirements regarding safety and accessibility in a manner reasonably designed to minimize any adverse impact on the certified historic property;

3.15.3 paving or landscaping costs which exceed ten percent (10%) of the total qualified expenditures;

3.15.4 sales and marketing costs; or

3.15.5 expenditures not properly charged to a capital account, including, in the case of owner occupied property, expenditures that would not properly be charged to a capital account where the owner using such property is a trade or business.

3.16 "Substantial rehabilitation" shall mean rehabilitation of a certified historic property for which the qualified expenditures, during the twenty-four month period selected by the taxpayer and ending with or within the taxable year, exceed:

3.16.1 for income-producing property, and non-income producing property other than owner-occupied historic property, the current standard required by Section 47(c)(1)(C) of the Internal Revenue Code; and

3.16.2 for owner-occupied historic property, five thousand dollars (\$5,000).

3.17 "Taxpayer" shall include any 'person' as defined in this section, and shall include any individual or corporation taxable under Title 5, or taxable under either Chapter 11 or Chapter 19 of Title 30

4.0 Procedures for Certification of Historic Property

4.1 A taxpayer may request that a property in a National Register listed or locally designated historic district be certified by the Delaware State Historic Preservation Officer as a certified historic property by filing the Part 1 application with the State Office. The Part 1 application shall be filed on standard forms available from the State Office. An incomplete application will not be processed until all required application information has been received. The State Office will notify the taxpayer of the additional information needed to undertake or complete the review.

4.2 The Delaware State Historic Preservation Officer shall determine whether the property for which a complete Part 1 application is received meets the definition of certified historic property and shall notify the taxpayer of the decision.

4.3 Taxpayers of properties individually listed in the National Register do not need to submit a Part 1 application. The name of the historic property and its date of listing in the National Register must be provided in the Part 2 application.

5.0 Procedures for Certification of Rehabilitation

5.1 A taxpayer may request a determination by the Delaware State Historic Preservation Officer that a proposed

substantial rehabilitation plan meets the criteria for certification by filing a Part 2 application with the State Office. The Part 2 application shall be filed on standard forms available from the State Office.

5.2 A taxpayer must submit Part 1 of the application prior to, or with, Part 2. Part 2 of the application will not be processed until an adequately documented and approved Part 1 application, where required as outlined in Section 4.0 of these regulations, is on file.

5.3 An incomplete application will not be processed until all required application information has been received. Where adequate documentation is not provided, the State Office will notify the taxpayer of the additional information needed to undertake or complete review.

5.4 The Delaware State Historic Preservation Officer shall determine whether the proposed substantial rehabilitation for which a complete application is received under Section 5.1 of this regulation meets the definition of a certified rehabilitation and shall send the taxpayer notice of the determination and of the credit award. The State Office may require modifications to the plan in order to meet the definition of a certified rehabilitation.

5.5 The Part 2 application must provide cost estimates of qualified expenditures prepared by a licensed architect, engineer, or contractor or a certified construction cost estimator for the proposed rehabilitation. This information will be used to determine the credit award for approved Part 2 applications.

5.6 The amount of tax credit applied against the qualified expenditures in accordance with Section 1813 of Title 30 Delaware Code (as amended) shall represent the "credit award."

5.7 Credits will be awarded in chronological order based upon the date and time on which each application receives Part 2 approval from the State Office.

5.8 In the alternative, the Delaware State Historic Preservation Officer may certify a rehabilitation plan and issue a Part 2 approval to any taxpayer who has obtained a Part 1 and Part 2 certification from the federal government pursuant to 36 CFR 67, where applicable. Under this provision, taxpayers must file the State of Delaware Part 2 cover form containing the information required under section 5.5 of these regulations.

5.9 All taxpayers must begin construction on the approved Part 2 plan within one year of receiving the Part 2 approval. Taxpayers, having received Part 2 approval, must notify the State Office in writing of the start date of the rehabilitation work. If construction on the rehabilitation plan is not substantially commenced and is being diligently pursued within this time period, the taxpayer will forfeit the awarded credits, and the credits awarded to such taxpayer will become available for award to other taxpayers. Substantially commenced and diligently pursued means that at a minimum twenty-five percent (25%) of the estimated

rehabilitation costs must have been expended. The State Office reserves the right to obtain documentation from the applicant supporting the expenditure.

5.10 The project may be inspected by the Delaware State Historic Preservation Officer or his/her designated representative to determine if the work is consistent with the approved Part 2 plan or the project has substantially commenced and is being diligently pursued.

6.0 Procedures for Certification of Completion

6.1 Upon completion of a certified rehabilitation, the taxpayer must submit a Part 3 application, with required documentation, to the Delaware State Historic Preservation Office. The completed project may be inspected by the Delaware State Historic Preservation Officer or his/her designated representative to determine if the work meets the definition of a certified rehabilitation.

6.2 Upon approval by the State Office that the completed rehabilitation meets the definition of a certified rehabilitation, the State Office shall submit the documentation to the Division of Revenue or the State Bank Commissioner, as appropriate, and request a determination of the value of the tax credit.

6.3 Upon receipt of the certification of the value of the tax credit associated with the Certificate of Completion by the Division of Revenue or the State Bank Commissioner, the Delaware State Historic Preservation Officer shall issue a Certificate of Completion to the taxpayer.

6.4 In no event shall the credit claimed by a taxpayer exceed the approved Part 2 credit award.

7.0 Fees for Processing Rehabilitation Certification Request

7.1 The fee for review of rehabilitation work for projects where the qualified expenditures are over \$100,000 is \$250 for each separate application. The fee from a single taxpayer for multiple projects submitted at the same time shall not exceed \$2,500. Final action will not be taken on any application until the appropriate remittance is received. No fee will be charged for rehabilitation projects where the qualified expenditures are under \$100,000.

7.2 The fee, where applicable, must be submitted with the Part 3 application. All checks shall be made payable to the State of Delaware.

8.0 Administrative Review

8.1 A taxpayer whose application has been disapproved by the Delaware State Historic Preservation Officer under these regulations may file a written request for review with the Secretary of State or the Secretary's designee within 60 days after the notice of disapproval is sent.

8.2 The Secretary of State or the Secretary's designee shall review the request within 60 days after receipt of the request. If the Secretary of State or the Secretary's designee

determines that the application filed meets the standards set forth in these regulations the application shall be considered approved. If the Secretary of State or Secretary's designee determines that the application filed does not meet the standards set forth in these regulations, the application shall be disapproved. The Secretary of State or Secretary's designee shall promptly notify the taxpayer of the Secretary's determination.

8.3 A taxpayer whose application has been disapproved by the Secretary of State may appeal that action in accordance with the Administrative Procedures Act, 29 **Delaware Code** Section 10101 et. seq.

8.4 An appellant who has exhausted all administrative remedies shall be entitled to judicial review in accordance with Subchapter V of the Administrative Procedures Act.

**DELAWARE RIVER BASIN
COMMISSION****NOTICE OF FINAL RULEMAKING****Amendment to the Delaware River Basin Commission's
Administrative Manual - Rules of Practice and
Procedure
Concerning Fees Associated with
Freedom of Information Act Requests****SUMMARY:**

At the May 31, 2002 business meeting of the Delaware River Basin Commission, the Commission amended its **Administrative Manual - Rules of Practice and Procedure** concerning fees associated with Freedom of Information Act requests. Today's notice fulfills a requirement of the Delaware River Basin Compact, 53 Delaware Laws, Chapter 71, that rules adopted by the Commission be filed in accordance with the laws of the signatory parties.

EFFECTIVE DATE:

This rule is effective immediately.

SUPPLEMENTAL INFORMATION:

On March 20, 2002 the Commission published on its web site a Notice of Proposed Rulemaking to amend the fee schedule associated with Commission responses to Freedom of Information Act ("FOIA") requests. Notice was published in the **Federal Register** on March 15, 2002, the **Delaware Register of Regulations** on April 1, 2002, the **New Jersey Register** on April 15, 2002, the **New York State Register** on March 13, 2002 and the **Pennsylvania Bulletin** on March 30, 2002. A public hearing was held on May 31, 2002, and the public was invited to comment, either in person at the hearing or in writing through the close of the hearing. No written or oral comments were received. The Commission approved the amended rule, as proposed, at the conclusion of its hearing on May 31, 2002.

The Commission's schedule of fees associated with responses to requests for information under FOIA was promulgated in 1975 and has not been updated since. Over the past quarter of a century, computer technologies have introduced new methods of recording and reproducing information that were not contemplated by the 1975 regulation, and administrative costs have increased. The amended fee structure reflects current technologies and costs.

The final rule amends Article 8, Section 2.8.10 "Fees"

of the Commission's **Administrative Manual - Rules of Practice and Procedure**, by striking the language of subsection A of that section and replacing it with the following:

A. Unless waived in accordance with the provisions of Section 2.8.11, the following fees shall be imposed for production of any record pursuant to this part.

1. Administrative Fees.

a. Charges for administrative fees include staff time associated with:

- (i) Processing FOIA requests;
- (ii) Locating and reviewing files;
- (iii) Monitoring file reviews;
- (iv) Generating computer records (electronic print-outs); and
- (v) Preparing logs of records deemed non-public.

b. Administrative charges will be calculated as follows: Administrative charges will be billed to the requester per quarter hour following the first quarter hour. These charges will be billed at the current, hourly paygrade rate (pro-rated for quarter hour increments) of the personnel performing the service. Administrative charges will be in addition to any copying charges.

c. Appointment Rescheduling/Cancellation – Requesters that do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the administrative charges incurred by the Commission in preparing the requested records. The Commission will prepare an itemized invoice of these charges and mail it to the requester for payment.

2. Photocopying Fees - The following are charges for photocopies of public records made by Commission personnel:

b. Standard Sized, Black and White Copies

The charge for copying standard sized, black and white public records shall be \$0.15 per printed page (i.e., single-sided copies are \$0.15 and double-sided copies are \$0.30). This charge applies to copies on the following standard paper sizes:

- (i) 8.5" x 11"
- (ii) 8.5" x 14"
- (iii) 11" x 17"

b. Color Copies/Printouts

The charge for color copies or color printouts shall be as follows:

- (i) 8.5" x 11" - \$1.00 per page
- (ii) 8.5" x 14" - \$1.50 per page
- (iii) 11" x 17" - \$2.00 per page

(iv) The charge for all color copies larger than 11" x 17" (including, but not limited to: photographic imagery, GIS print-outs, and maps) shall be calculated at the rate of \$2.50 per square foot.

c. Electronically Generated Records

Charges for copying records maintained in electronic format will be calculated by the material costs involved in generating the copies (including, but not limited to: magnetic tape, diskette, or compact disc costs) and administrative costs.

d. Other Copying Fees

The Commission, at its discretion, may arrange to have records copied by an outside contractor if the Commission does not have the resources or equipment to copy such records. In this instance, the requester will be liable for payment of these costs.

3. Forwarding material to destination. Postage, insurance, and special fees will be charged on an actual cost basis.

FURTHER INFORMATION CONTACT:

The complete **Administrative Manual - Rules of Practice and Procedure** as amended is available on the Commission's web site at <http://www.drbc.net> or upon request from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, NJ 08628-0360. For further information, contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, Delaware River Basin Commission, 609-883-9500 x203.

Pamela M. Bush, Esq.
Commission Secretary
June 12, 2002

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
REAL ESTATE COMMISSION**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 2905(a)(1) and 2911(b), the Delaware Real Estate Commission proposes to revise its Guidelines for Fulfilling the Delaware Real Estate Education Requirements. The proposed amendments revise Guideline 8.2 by deleting the guideline in its entirety and presenting a new guideline that reorganizes the original content with some further clarifications. Substantive changes include defining what constitutes "faithful and complete attendance" and clarifying that sponsors or providers of all continuing education shall be responsible for conduct of their courses.

A public hearing will be held on the proposed Education Guidelines on Thursday, August 8, 2002 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Commission will receive and consider input in writing from any person on the proposed Education Guidelines. Any written comments should be submitted to the Commission in care of Joan O'Neill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Education Guidelines or to make comments at the public hearing should notify Joan O'Neill at the above address by calling (302) 744-4519.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, July 18, 2002 at 9:00 a.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES**

**Public Notice
Delaware Medicaid/Medical Assistance Programs**

In compliance with the State's Administrative

Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, the Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the policy of the Transitional Medicaid Program as it relates to the Health Insurance Flexibility and Accountability (HIFA) Demonstration waiver.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by July 31, 2002.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE**

Delaware Medicaid/Medical Assistance Programs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, the Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to revise the following Medicaid policies related to the Children's Community Alternative Disability Program. Specifically, the text of the Children's Community Alternative Disability Program is being revised to bring the language of the policy into federal compliance with 42 CFR §435.225. The proposed changes cover re-numbering, citations and clarifications.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by July 31, 2002.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF FISH & WILDLIFE**

SAN# 2002-09

Title Of The Regulations:

Tidal Finfish Regulations

Brief Synopsis Of The Subject, Substance And Issues:

In order to remain in compliance with the Atlantic States Marine Fisheries Commission's Fishery Management Plan for Black Sea Bass, Tidal Finfish Regulation No. 23 needs to be amended to increase the commercial size limit from the current 10 inches to 11 inches. Tidal Finfish Regulation No. 24 needs to be amended for the size requirements for escape vents in black sea bass pots to be increased from a rectangle of 1.125 inches x 5.75 inches to 1.375 inches x 5.75 inches, a circular vent from 2 inches to 2.375 inches, a square vent from 1.5 inches to 2.0 inches and wooden lathes spacing from 1.125 inches to 1.375 inches.

Notice Of Public Comment:

Individuals may present their opinions and evidence/or request additional information by writing, calling, or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 (302-739-3441). A public hearing will be held in the DNREC auditorium 89 Kings Highway, Dover, DE 19901 at 7:30 on Tuesday, July 23, 2002. The record shall remain open for written comments until 4:30 PM on July 31, 2002.

Prepared By:

Richard Cole, (302)739-4782, May 31, 2002

**DIVISION OF WATER RESOURCES
WATERSHED ASSEMENT SECTION**

Brief Synopsis of the Subject, Substance and Issues:

The State of Delaware is proposing to reclassify certain areas of Indian River Bay as Approved for the harvesting of shellfish based on water quality data and scientific findings. Appendix 1 of the State of Delaware Shellfish Sanitation Regulations will be amended to exclude those areas of the Indian River Bay prohibited for Shellfish harvesting.

Notice Of Public Comment:

The Department of Natural Resources and Environmental Control, Division of Water Resources,

Watershed Assessment Section, Shellfish and Recreational Water Branch will conduct a public hearing on July 22, 2002, beginning at 6:00 p.m. in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to hear testimony and receive comments on a proposed amendment to the State of Delaware Shellfish Sanitation Regulations.

The proposed amendment to Appendix 1 of the Delaware Shellfish Sanitation Regulations will reclassify a portion of Indian River Bay from Prohibited to Approved for the harvesting of shellfish. The area, consisting of 931 acres, shall be contiguous with shellfish waters currently classified as Approved, and shall proceed in a westerly direction from the existing Approved/Prohibited boundary line running from Grays Point to Bay Farm to the shore on and around Rock Point, and excluding the following Prohibited waters: Indian River-proper and its tributaries and an area adjacent to Indian River-proper bounded by a line 650 feet in length in a north-south direction beginning at the Eastern Bank of the mouth of Emily Gut thence running from the southern terminus of said line in a westerly direction to Highgrass Point. Vines Creek and Pepper Creek-proper and their tributaries beginning at a point south of Rock Point and running in an easterly direction to Grays Point.

For additional information or to request a copy of the proposed revisions to the regulations please contact the Watershed Assessment Section at (302) 739-4590.

The procedures for public hearings are established in 7 Del. C. § 6006 and 29 Del. C. §10117. Inquiries regarding the public hearing should be directed to R. Robert Thompson at (302) 739-4403. Statements and testimony may be presented orally or in written form at the hearing. It is requested that those interested in presenting statements register in advance by mail. The deadline for inclusion of written comments in the hearing record will be announced at the time of the hearing. Written statements may be presented prior to the hearing and should be addressed to: R. Robert Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

**DEPARTMENT OF
TRANSPORTATION
DIVISION OF PLANNING AND POLICY**

Statewide Long Range Transportation Plan

We are ready to accept the challenges of providing a transportation system that supports a strong quality of life. But it cannot be done alone. The principles, policies, and actions contained in this document were developed based on the ideas and comments of Delawareans from throughout

the state. The public workshops held March 4, 5, and 6, 2002 helped to validate the vision and raise issues that were seen as essential for inclusion in this plan update.

Comments on the Plan are welcomed. Please contact:

Joseph Cantalupo, Assistant Director of Planning
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903
(302) 760-2121 (telephone)
(302) 739-2251 (fax)
jcantalupo@mail.dot.state.de.us

Copies of the Plan are also available on DelDOT's website at www.deldot.net. Comments on the Plan can also be submitted via this website.

**DELAWARE RIVER BASIN
COMMISSION
25 STATE POLICE DRIVE
P.O. BOX 7360
WEST TRENTON, NJ 08628-0360**

The Delaware River Basin Commission will meet Wednesday, July 17, 2002 in West Trenton, New Jersey. For more information contact Pamela M. Bush, Commission Secretary and Assistant General Council, at (609) 883-9500 ext. 203.

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Delaware became the first state on December 7, 1787 by being the first state to ratify the new United States Constitution.

Delaware's first constitution was adopted on September 20, 1776, with subsequent versions adopted in 1792, 1831 and the current version in 1897.



Delaware's lawmaking body, is comprised of a State House of Representatives, whose 41 members are elected for two-year terms, and a State Senate, whose 21 members are elected for four-year terms. Half of the Senate seats are contested in each general election.

The General Assembly Website features:

- Current legislative information
- Information on both the Senate and House of Representatives
- Access the Delaware Code
- Access to the Delaware Register of Regulations
- Information on the legislative process
- Various reports and publications

The General Assembly Website is located at:

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